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ABSTRACT

The hearings consider a bill, H.R. 8618, to amend the Occupational Safety and Health Act of 1970 (OSHA) which would provide on-site consultative services to employers desiring to comply with OSHA standards. H.R. 8616 was introduced to strengthen OSHA by providing an additional program that would encourage employers to voluntarily comply with safety and health standards established under the act. The testimonies presented include comments from the following: (1) State representatives from Illinois, Missouri, Nebraska, and Wisconsin; and (2) representatives from the Chamber of Commerce, National Federation of Independent Business, National Society of Professional Engineers, National Association of Manufacturers, Department of Labor, American Federation of Labor and Congress of Industrial Organizations, AFL-CIO, and the United Steelworkers of America. Other prepared statements came from the National Association of Wholesaler Distributors, Automotive Service Industry Association, Can Manufacturers Institute, National Small Business Association, National Society of Professional Engineers, and a State representative from Texas. The texts of all testimony and discussions are presented in full. (Author/EC)

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ON-SITE CONSULTATION HEARINGS, OCCUPATIONAL SAFETY AND HEALTH ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON MANPOWER, COMPENSATION, AND HEALTH AND SAFETY

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 8618

TO AMEND THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

HEARINGS HELD IN WASHINGTON, D.C.
JULY 22-24, 31, 1975

Printed for the use of the Committee on Education and Labor
Carl D. Perkins, *Chairman*

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EDUCATION & WELFARE
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ON-SITE CONSULTATION HEARINGS, OCCUPATIONAL SAFETY AND HEALTH ACT

TUESDAY, JULY 22, 1975

House of Representatives,
Subcommittee on Manpower,
Compensation, and Health and Safety
of the Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2175, Rayburn House Office Building, Washington, D.C., Hon. Dominick V. Daniels, chairman of the subcommittee, presiding.

Members present: Representatives Daniels, Hawkins, Gaydos, Risenhoover, Beard, and Mrs. Smith.

Staff present: Daniel Krivit, Counsel; Denniese Medlin, clerk; and Susie Nelson, legislative associate.

Mr. **Daniels**. The Subcommittee on Manpower, Compensation, and Health and Safety will come to order.

We meet this morning to consider legislation to amend the Occupational Safety and Health Act of 1970 to provide consultative services to employers desiring to comply with OSHA standards. On-site consultation was discussed on the House floor, June 25, during consideration of the Labor-HEW appropriations bill for fiscal year 1976. As chairman of the Manpower, Compensation, and Health and Safety subcommittee which has jurisdiction over OSHA, I pledged in the course of this debate that I would quickly propose a consultation bill and call hearings on this subject of great concern to my colleagues.

Accordingly, on July 14, I introduced H.R. 8618, to provide for a 3-year program of consultation and education to employers requesting these services from the Department of Labor. Four days of hearings on consultation are scheduled to afford Members of Congress, the Department of Labor and public witnesses an opportunity to bring their views to the attention of this subcommittee.

My single purpose in proposing H.R. 8618 is to strengthen OSHA by providing an additional program to encourage employers to voluntarily comply with safety and health standards established under the act. My amendment will not weaken or diminish the vital enforcement provisions of OSHA, including first-instance sanctions. I remain firmly committed to the first-instance sanctions provision in section 9 as the fundamental incentive to employers' voluntary compliance prior to inspection.

My proposal separates the functions and personnel responsible for enforcement and consultative services. Further funding of consultative manpower should not be at the expense of appropriations for compliance personnel. I therefore include a new authorization for consultation and education to insure that funds are not siphoned from enforcement programs to finance consultative services.

The current program of consultative services to employers in States without operational State plans was initiated through amendments to the Labor-HEW appropriations bill of fiscal year 1975. I believe it is incumbent on the authorizing subcommittee to investigate this program of grants on a 50–50 matching basis to preempted States. As of this date, 15 of the 34 preempted jurisdictions eligible for sec. 7(c)(1) grants are participating. The remaining 19 eligible jurisdictions have no form of on-site consultation.

Twenty-two States currently have approved sec. 18(b) plans. Of these States, 20 offer onsite consultation; one State, Iowa, is planning this service; and another State, Utah, has chosen not to offer consultation.

This subcommittee has conducted 27 days of oversight hearings since passage of OSHA in 1970. We have heard extensive testimony from Members of Congress and public witnesses concerning the difficulties that many employers—particularly small businessmen and women—experience in coming into compliance with OSHA standards. Many small business operators lack the financial resources to retain private consultants to counsel applicability of OSHA standards to their work sites.

I realize also that many States today are experiencing fiscal constraints which preclude participation in the OSHA 50–50 contract program for consultative services under sec. 7(c)(1). An employer, however, should not be precluded from on-site consultation simply because his State is unable to join in the matching grant program. This subcommittee must therefore direct its attention to a program that insures consultative services to employers in all 56 jurisdictions covered by the Occupational Safety and Health Act.

This subcommittee cannot and must not deviate from its standing commitment to millions of American workers to assure safe and healthful working conditions through enforcement of standards developed under OSHA. I believe that we can further assist the working man and woman by encouraging employers to voluntarily comply with the standards. That is the purpose of my amendment and of these hearings.

[Text of H.R. 8618 follows:]

[H.R. 8618, 94th Cong., first sess.]

A BILL, To amend the Occupational Safety and Health Act of 1970 to provide additional consultation and education to employers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 21 of the Occupational Safety and Health Act of 1970 is amended by adding at the end thereof the following new subsection:

"(d)(1) In order to further carry out his responsibilities under this section, the Secretary may visit the workplace of any employer for the purpose of affording consultation and advice to the employer. Such consultative visits may be conducted only upon a valid request by the employer for consultation and advice at the workplace concerning the obligations of the employer under section 5. In making consultative visits under this subsection, the Secretary shall give priority to small businesses and to hazardous workplaces. The Secretary shall make and transmit to the employer a written report, containing recommendations regarding the elimination of any hazards disclosed during any such consultative visit.

"(2) No consultative visit authorized by this subsection shall be regarded as an inspection or investigation under section 8 of the Act and no citations shall be issued nor shall any civil penalty be imposed by the Secretary upon such visit, except that: (A) where an employer fails to eliminate an imminent danger disclosed during a consultative visit, the Secretary shall take any appropriate action under section 13 to eliminate such condition; and (B) if there is substantial probability that death or serious physical harm to employees could result from conditions disclosed during a consultative visit, the Secretary shall immediately notify the employer of such conditions and afford the employer a reasonable time to eliminate such conditions. Where the Secretary is not satisfied through a further consultative visit, documentary evidence, or otherwise that such elimination has taken place, the Secretary may take any appropriate action under this Act.

"(3) Information regarding consultative visits shall not be transmitted to representatives of the Secretary engaged in enforcement activities except where necessary in order to carry out the provisions of paragraph (2).

"(4) Except as otherwise provided, nothing herein shall affect the duties and responsibilities of the Secretary under sections 8, 9, 10, and 13. Advice given during a consultative visit shall not be binding on the Secretary in the event of any inspection of the workplace. In the event of such inspection, a written report of the consultation visit may, with the consent of the employer, be considered by the Secretary for the purpose of determining the employer's good faith in proposing penalties.

"(5) In prescribing rules and regulations pursuant to this subsection, the Secretary shall provide for the separation of functions between officers, employees, or agents who conduct consultative visits pursuant to this subsection and officers, employees, or agents who conduct inspections or investigations under section 8.

"(6) In order to further carry out his responsibilities under this section, the Secretary shall establish programs for the education and training of employers and employees which, to the extent practicable, shall be conducted in local communities and shall deal with hazards in particular industries.".

SEC. 2. For the purpose of carrying out the amendment made by the first section of this Act, there is authorized to be appropriated the sum of $2,000,000 for the period beginning July 1, 1975, and ending September 30, 1976, $7,000,000 for the fiscal year ending September 30, 1977, and $8,000,000 for fiscal year ending September 39, 1978.

Mr. DANIELS. Our first witness today is Hon. Paul Findley, Representative of the 20th District of the State of Illinois.

I extend to you, Paul, a sincere welcome to testify at these hearings.

STATEMENT OF HON. PAUL FINDLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. FINDLEY. Thank you very much, Mr. Chairman.

First of all, I would like to thank you and the members of the subcommittee for granting me the opportunity to appear before you today to speak in support of amending OSHA to provide on-site consultation.

I am impressed with the speed with which the subcommittee has begun consideration of the several bills pending before it, and I am especially impressed with the chairman's bill, H.R. 8618.

Let me state at the outset that though I see areas where it might be strengthened, I support it fully. I recognize it as an advance and I urge you to get an on-site consultation bill before the Congress as soon as possible.

Five years ago, the Occupational Safety and Health Act was enacted into law. The initiatives set forth by the act have gone a long way toward insuring the safety and health of the Nation's workers. The law, overall, is a good one. I voted for it. It has worked well. It has been tremendously successful, I believe in reducing the number of, work-related casualties, enhancing productivity by cutting down on the number of man-hours lost through injury, and encouraging voluntary safety efforts on the part of employers. But, as in any complex piece of legislation affecting millions of people, OSHA contains imperfections which need correction. Perhaps the single most glaring fault in the law is the lack of provision for prior on-site consultation.

Almost from its enactment in 1970, many people recognized that small businessmen were going to run into difficulty in attempting to interpret and comply with all the standards set forth in OSHA. Many small employers simply do not possess either the technical or physical resources required to comprehend or fully comply with all the OSHA requirements. Many conscientious small employers sincerely concerned about the safety of their employees cannot eliminate violations simply because they do not know what violations exist. As the distinguished chairman has noted, the single most important problem facing OSHA is the "inability of the small businessman to learn what is expected of him."

Regrettably, the act presently prohibits Federal inspectors from offering nonpenal advice and consultation to an employer. Congress and the Department of Labor have tried to provide prior on-site consultation to small employers through the use of State personnel. This approach has been woefully deficient, however, for two reasons. First, there were problems of inconsistency between State consultants and inspectors. The chairman's bill, unfortunately, will not completely eliminate this problem.

More importantly, not every State provides such services. In fact, at present 31 States still offer no comprehensive consultative program. Currently 60 percent of the working population does not have access to any form of consultative services.

The same day the chairman introduced his bill, I introduced a bill H.R. 8619, which would, I believe, remedy many of the problems we are concerned about. It would permit a businessman to request that OSHA conduct an on-site consultative visit for the purpose of advising him as to existing violations and what must be done to clear them up without penalty. It would allow an employer anxious to bring his workplace into compliance to request that OSHA officials visit the premises and render advice without fear of being cited or penalized for his conscientiousness. Because my bill would amend the basic law, it would extend coverage of on-site consultation to all small employers with 25 or fewer employees in every State. I believe such an amendment would tremendously enhance voluntary compliance on the part of small employers. In addition, it would bring an important element of fairness into the enforcement of OSHA and it would, I think, eliminate much of the objection to the act.

My bill would also allow an OSHA inspector to exercise his judgment in determining whether or not to issue a citation in the course of a routine inspection. Each of us has heard the seemingly endless accounts of employers who were cited for ridiculously minor or innocent violations. I don't think it is necessary to dredge up all of those cases again. It is clear that they do occur and that there are many instances where citations should not be issued because the violation is minor, innocent, and of no immediate danger to health or safety. Under OSHA as it is presently written, an inspector must issue a citation if he finds any violation whatsoever—no matter how minor or innocent.

This is a startling anomaly in our American form of justice. In every other form of safety regulation, for example, mine safety and inspection, the compliance officer may use his discretion in issuing a first-instance violation. He can hold a citation in abeyance for a period of time sufficient for the employer to abate the hazard. If the employer does successfully comply, no penalty may be levied. Even a traffic cop has more discretion than an OSHA inspector.

It is important here to note that my bill would not prevent an inspector from issuing a first-instance citation if for any reason he deemed it warranted. But, by allowing the inspector more flexibility, we are encouraging an atmosphere of cooperation to bring about compliance that is so vital to the effectiveness of OSHA.

I realize the primary difference between my bill and the chairman's is that my bill would permit inspectors to provide consultation and issue warnings without citations. I believe this is in the tradition of American enforcement procedures. I am not aware of any other area of our society in which there is a separate corps of consultants separate from those who issue citations. Perhaps there is, but I am not aware of it.

I think of the traffic violations, for example. The same officer who has the power to issue a traffic ticket also has the power to issue a warning. The same is true of safety inspectors for mines.

The corps of officers in the State of Illinois that enforce ICC regulations, also have the right both to issue citations and to issue advice and warnings.

So I thank you very much, Mr. Chairman, for giving me this chance to present my views.

Mr. **Daniels**. Thank you, Paul, for your testimony.

I think we basically agree on the principle that is involved. I studied your bill. In fact, I had my staff prepare for me an analysis and on the main principles, we agree.

There are some differences; for example, you changed section 9 of the act by striking the word "shall" and inserting in lieu thereof, "may". This deals with the first-instance violations.

Now, I recall the hearings and the discussions that were held in committee and with many people interested in the enactment of health and safety law. It was felt at that time that this bill would bring about compliance and the purpose was to encourage voluntary compliance. To hire a staff of enforcement officers to inspect the 4 million or more workplaces in this country would require a substantial amount of money and with the present number of enforcement officers that are engaged by the Department of Labor, it would take on an average of 100 years to reach each and every workplace. So the possibility of an inspector going to a workplace once in 100 years gives the employer a good spread and, while I believe most employers are anxious to come into compliance and they want to obey the law, I think the fear of the fact that he might be cited should an inspector walk in would encourage him to come into compliance voluntarily. By enactment of legislation we have before us today, whereby he can show his good faith by asking for consultative services, it gives him even a better break, so to speak.

So I disagree with section 4 of your bill, which modified section 9(a) of the basic law. I personally would like to see the basic law remain as it is because I believe that particular section of your proposal will weaken OSHA.

Mr. **Findley**. Could I make two comments, Mr. Chairman?

First of all, there is a question of expense and it would seem to me prudent to permit the same trained personnel who have the authority to issue citations also to issue warnings and consultation both, for both assignments they would need pretty much the same training, understanding, and skill, so why not use the same corps, and by that means get more for our money.

The second comment I would make is under my bill every employer would have a pretty powerful incentive for voluntary compliance because he would not know for sure that the inspector on his first visit to his premises would find that he was making a conscientious effort to comply; he wouldn't have the abolute assurance that he would just get a warning because if the inspector found flagrant violations that in his judgment deemed a justification for a first-instance violation, he would have authority to issue the citation.

Mr. **Daniels**. Well, as to the first point about placing consultative services in the hands of the enforcement officer, again we go to the basic philosophy behind the act.

The idea is to bring employers into the voluntary compliance attitude, because of the lack of ability to make an immediate inspection. The fact that we permit now or would permit, under this legislation, an employer to ask for on-site consultation at his business site does not give him a guarantee that an enforcement officer will not walk in. So, you see, he still has that threat over his head if he is in violation and he is still subject to penalty.

As I said before, the idea is to have him voluntarily comply with the act because we can't afford to hire all of the officers necessary to properly police every workplace in this country. You and I disagree on that particular point.

May I go to the second point where we disagree.

Your bill would only apply to employers employing 25 or fewer employees, whereas, the bill that I introduced, H.R. 8618, would permit every employer, large and small, to ask for consultative services.

Mr. **Findley**. I certainly would concur in the broader application of this.

Mr. **Daniels**. But I go a step further than that. I give priority consideration to small businesses and hazardous occupations because I can visualize a situation arising in some areas of the country where the regional office is going to be swamped with requests for consultative services. It may take a long period of time to provide these services to each and every employer upon request.

Therefore, I give a priority to the small employer as well as those industries that are considered by the Department of Labor as extra-hazardous.

Do you have objection to that?

Mr. **Findley**. I think that is very fine. That is in the spirit of my own provision on 25 or less.

Mr. **Daniels**. With those two points in mind, I think basically the bills you and I have introduced, are substantially the same. I am concerned about the first point raised here today.

Mr. **Findley**. Mr. Chairman, I know that any bill that proposes a change in OSHA is bound to draw fire and become controversial and I do commend you for introducing the bill and I express my appreciation for the fact that you have scheduled hearings and I hope it can move along promptly.

Mr. DANIELS. I want to thank you for coming and being our first witness.

Just a moment, our distinguished colleague from Pennsylvania, Mr. Gaydos: any questions for the witness?

Mr. GAYDOS. As usual, it is my pleasure to welcome you along with my colleague who is most astute and vociferous on that matter. I congratulate him.

I would like to ask you, Paul, if I may, what do you envision as far as the number of employees necessary to provide the contemplated number of consultative visits?

Mr. FINDLEY. Well, I wish I had an informed answer to that. It is my understanding that OSHA now has, under this new authorization, in the realm of 1,800 inspectors. That obviously is, frankly, only a fraction of those needed to assure that safety and health standards will be obtained. Am I correct?

Mr. KRIVIT. There are 1,000 in the field.

Mr. GAYDOS. If I may add a little information, we have roughly speaking, about 1,000 employees out in the field actually making inspections, that is, give or take a few hundred.

What do you envision, Paul, as to the required number, that should be availabie for the expected large amount of requests for consultative services? Where are we going to get these people?

Mr. FINDLEY. I don't know. I realize, too, this point. Well, I don't have a precise recommendation as to numbers.

I heard it said during the debate on the recent appropriation bill that the contemplated number of inspectors, with those authorized by the bill as well as those already in service it would require about 50 years to make the complete rounds of all business places in the country. Obviously, that is not nearly enough.

Now, maybe it is partly a question of training. Maybe with training they can do the job more speedily. I think that perhaps would be true. But it is quite clear to me we have only a fraction of those required to do an efficient job of visiting routinely, not once every 50 years, but surely at least once every 5 years, visit the business establishments of the country.

I believe in the act, and I think it ought to be enforced. We have to have the trained skilled manpower to enforce it and we have only begun, frankly.

Mr. GAYDOS. Would I be too far off if I concluded as of this time, based upon our past experience, as far as enforcement officials and number required, that we are talking about something in theory rather than practicality, for the simple reason that I can't envision hiring or training enough people in the next 20 years to even begin to respond to those expected requests for consultative services. That is how I feel about it. I don't know, I would like to have your opinion on it because you are advocating certain changes.

Mr. FINDLEY. Yes, sir. As I said before, I don't have any number to recommend, but I am sure that we can train manpower for this assignment and I, for one, am ready to vote to provide funds to expand the corps sufficiently to do the job right.

I really think safety and health of employees is vital and it is high time we provided enough inspectors to do the job properly.

Mr. **Gaydos**. Would you be in a position to rethink or reanalyze the requirement in your legislation as distinguished from the committee's bill regarding the specific provision therein, which says once you applied for consultative services, up until the time the services are endered, you are not liable for any violation, including these small insignificant violations?

Mr. **Findley**. Well, frankly, I realize that my bill represents my goal, my ideal in the way of changes in the law.

I would rejoice if any steps were taken toward that goal. I realize that I can't expect to see my bill become law, at least not in the near future. So any step toward that I would certainly welcome.

One reason I put in the provision related to employers of 25 or less is out of concern for the number of requests that would be made. I know that the greatest number lies within that category. Yet the greatest needs lie there, too; so I thought it prudent to limit the application of my provision just to the smaller employers.

Mr. **Gaydos** Paul, I am not trying to nail you down, but I do raise a point I think that is a valid point, to this effect, if we adopted your theory, it would, of natural consequence occur, that everybody, how many are there—5 or 6 million workplaces we have—everybody would make a simple request for consultative services, and have the benefit then of immunity from any type of citation, big or small, dangerous, hazardous, or what-have-you. That is what I am afraid of.

Mr. **Findley**. I see.

Frankly, I would be glad to consider modification of that because I recognize the problem it would pose.

The other part of my bill I think is the vital part. That is changing the word "shall" to "may."

Now, that keeps, in a sense, a club over the head of every employer, large or small, but it also introduces this element of fairness which would permit an inspector to exercise his judgment as to whether the situation would justify a first-instance violation or not.

Mr. **Gaydos**. I respect your position and I do want to compliment you and I know that you want, in all sincerity, to cooperate with the committee to get legislation passed, and we value your support on and off the floor. I mean that most sincerely.

Along those lines, I presume you would then be in a position to consult with us on our consultations?

Mr. **Findley**. Yes, sir. As a result of this colloquy, Joe, I can see the problem imposed by this immunity provision and I think some change should be made in that.

Mr. **Gaydos**. I appreciate your observation.

I will conclude by asking you, on page 2, "Currently 60 percent of the people do not have access to consultative service."

What do you mean 60 percent of those working or workplaces?

Mr. **Findley**. I think that applies to workplaces.

Mr. **Gaydos**. Fine. Thank you very much for your usually informed and direct testimony.

Mr. **Daniels**. Paul, may I ask this question.

There is another difference basically between your bill and my bill, and that is after the employer requests a consultation on-site, my bill provides for the consultative officer to furnish the employer with a report and either gives him a clear bill of health or says, "I find this, that, and the other in violation," and asks him to correct it within a period of time.

Your bill does not provide for a written report. Would you support a provision for a written report?

Mr. FINDLEY. I think the provision of the written report is very vital. I wish I had included it in my bill. I think my bill could be implemented with a written report, but I think it is well to spell it out in the bill.

Mr. DANIELS. I think it would be better. It would improve the act because it would allow the employer, in case he should be cited subsequently for a violation, to show that he followed the instructions of the consultative officer and it could be taken in mitigation of any citation or penalty that the Secretary might seek to impose.

Mr. FINDLEY. I would prefer that your bill permit such a written report to be used as a defense against the charge.

Mr. DANIELS. I won't go that far to say it does, but it could be considered in mitigation of the offense by the Secretary.

I now recognize the gentleman from California, any questions?

Mr. HAWKINS. All I want to say is, I, too, want to join my colleague, Mr. Findley, in expressing our respect for the leadership you have given in this particular field.

I think it has been most encouraging and outstanding.

With respect to the bill which you have introduced, there seems to be general agreement between you and the chairman of this subcommittee with respect to the issue of consultation.

However, your bill, particularly section 4, goes much beyond that issue and begins to get into basic amendments to the act itself.

Mr. FINDLEY. That is right.

Mr. HAWKINS. And that in a sense opens up or reopens some of the problems we have had in passing such legislation as this.

I am wondering whether or not, and this is purely from a matter of strategy point of view, whether or not that may jeopardize what most of us agree on, which I think would be fairly simple to get passed at this session, if we were to open up the act for certain changes, and whether or not, from a viewpoint of strategy that is desirable in proposing it at this particular time.

Mr. FINDLEY. Well, Mr. Hawkins, I have not examined the germaneness question.

My own feeling is that the most important thing to do at this point is to change the word "shall" to "may."

Of course, that is in the basic act. Maybe that could be isolated in the bill in such a way as not to open up the rest of the act to amendment.

I would certainly favor that, if that is possible, because I think that is the most vital step that needs to be taken.

It is, of course, desirable to provide consultation, but, as I mentioned earlier, it seems to me a waste of resources to establish a separate corps for consultative service from the enforcement corps, when both sets of personnel would naturally be required to have the same knowledge, the same skills and same understanding of business activities.

Why not just have the inspector corps authorized by changing the one word shall to may offer to give advice on first call.

Mr. HAWKINS. I certainly appreciate the answer and I think it is well thought out. Certainly, I think it has great merit and I have no further questions.

Thank you, Mr. Findley, and thank you, Mr. Chairman.

Mr. GAYDOS. Will you yield?

Mr. HAWKINS. I yield to my colleague.

Mr. GAYDOS. One more question.

Talking about the complicated nature of this legislation, the desire of most people to want to comply but because of the very difficult interpretations that are present they cannot comply, and I have been thinking about this and trying to analyze and compare this admittedly very difficult legislation with other difficult existing Federal legislation such as the IRS where you have just a myriad of complicated problems and of changing court decisions; yet you have a right to consultative services involving IRS problems and they do have people there available to consult.

As a practical matter, the way it works is that you are always liable for a mistake, misinterpretation—what-have-you, regardless of your intent, yet you have these consultative services available to you, if and when you need them, in the meantime though your liability is permanent from the beginning of the act, the effective date of it, until ultimately you are checked or found guilty of some infraction.

I am trying to draw this analogy here, because I don't think, or I can't envision, or I can't see at this time a practical solution to the previous question I raised with you which you agree is a problem; that is, what do you do as far as the multitude of requests for consultative services we can expect under this act.

Do you see any comparison in the problems?

Mr. FINDLEY. Yes, sir. As I said before, as a result of our discussion I recognize this exemption provision must be changed. I favor a change in it.

You mentioned the consultative service provided by IRS, and I believe I am correct in stating the same people who spend most of their time prodding around for establishing a case for violation of IRS regulations are the ones called in for consultation.

For example, I don't know what your practice is, first, I call up for IRS information, one of the agents to help me to prepare my income tax return, and it does not relieve me of liability in case an error is found, but it is a consultative service I appreciate, but the same man that comes in to help me prepare my return spends most of the year examining returns and going after violators of IRS.

I believe I am correct in stating they use the same personnel for consultative work and for investigative work.

Mr. GAYDOS. You make a point which I think requires further consideration and analysis.

Mr. DANIELS. Thank you very much, Paul.

There is a quorum call on the House floor, so I wish to announce we will take a brief recess and get back promptly, probably in about 10 minutes.

[Recessed.]

Mr. DANIELS. The committee will come to order.

Our next witness is Mr. Richard B. Berman, Labor Relations Director, Chamber of Commerce of the United States.

[Prepared statement of Richard B. Berman follows:]

PREPARED STATEMENT OF RICHARD B. BERMAN, DIRECTOR OF LABOR LAW FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES

I am Richard B. Berman, Director of Labor Law for the Chamber of Commerce of the United States.

The National Chamber is the largest federation of business and professional organizations in the United States and is the principal spokesman for the American business community. Our membership consists of 1,700 trade and professional associations, 2,500 local, state and regional chambers of commerce, and over 48,000 business firms. Our underlying membership is more than five million individuals and firms.

As you know, we have appeared before this Subcommittee before, seeking the type of changes in the Occupational Safety and Health Act that you are contemplating today, among others. We are pleased that the Subcommittee Chairman and the other co-sponsors are on record in favor of enacting an on-site consultation provision.

While we have supported the concept since it was first raised in the Congress, we have also shared our views on how such a program should be administered.

Our primary concern is that, if such an advisory system is established, it should be designed in such a way as to encourage its maximum use. Therefore, I will suggest several areas of concern that if properly addressed will make the program workable and acceptable.

SECTION 21(D)(1)

H.R. 8618 suggests that a consultative inspection shall be conducted only upon a valid request by the employer, without defining the term "valid."

The 93d Congress debated this point on several occasions, with many suggesting that this was an intentional restriction on the program's use. The theory was to require an employer to narrow his request down to items that would be reviewed. Only that area or operation which an employer specifically asked to have inspected would be inspected.

While we endorse the concept of keeping the inspection visit short, especially if that is what will satisfy the employer, we also encourage an interpretation where the employer can lay his facility open and ask for a general audit of his work place not unlike the walkaround inspection common under section 8 of the act.

SECTION 21(D)(2)

This section provides an approach that is inconsistent with the true concept of consultation. It is one of the most serious defects in the bill.

As the Subcommittee Chairman has noted, a major reason for the bill's introduction is that many employers, particularly small ones, lack sufficient financial resources to retain private consultants to help them interpret OSHA standards.[1]

The government consultant role, as we envision it, is not unlike that of an outside paid consultant. This bill deviates dramatically from that concept. Section 21(d)(2) suggests that, where the consultation officer personally feels there is a substantial probability that serious physical harm, as defined by the Secretary, will result from certain conditions, a series of mandatory orders will be set in motion that may result in liabilities not dreamed of when the consultative visit was first requested.

More specifically, an employer may acknowledge that a given condition violates the Act but certainly not in the form of a serious violation, as may be alleged by the consultant. What is the employer's option at this point? Does he comply with the consultant's demand although it may be wrongly asked of him? Or does he elect the alternative and wait for the Secretary to take "any appropriate action under the Act"? In the last Congress, the "appropriate action" involved a section 8 inspection.

If that inspection is triggered *and* the employer is found to have been correct regarding the non-serious nature of the violation, what relief will be afforded him when he is faced with a penalty for a non-serious violation, a penalty he would not have received if (a) he had never elected to have a consultative visit or (b) if the consultant had been correct in his assessment. Also, when the Section 8 inspection is made regarding the disputed violation, what else will be inspected? Will the inspector look only at the disputed condition? I certainly doubt it. Arguments regarding efficiency and manpower will be advanced suggesting it would be wasteful to send an inspector to a plant to look at only one possible violation.

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[1] 121 Cong. Rec. 110, July 14, 1975, p. H 6796.

What if the employer agrees that it is a serious violation but feels that the abatement period is too short? The language of the Act, plus the lack of relief in this bill concerning that eventuality, suggest again that the employer must first hold himself in contempt of the first order, be visited with an inspection, receive a new abatement date for the violating condition *and* any other alleged violations (the date may be shorter than the original one), and then appeal the entire decision to the OSHA Review Commission, seeking an extension of the abatement date or dates as provided in Section 10 of this Act.

Obviously the employers most likely to benefit by this consultative service will often be the very ones who will be reluctant to use it because of the potential open-ended liability.

SECTION 21(D)(4)

We are also troubled by the provision in proposed Section 21(d)(4) to hold the Secretary free from the results of his advice, regardless of its worth.

On introducing this legislation, Chairman Daniels stated that the consultant's finding should not have any binding effect on the Department of Labor due to the constantly changing conditions in the work place. Although there is merit to that argument where it applies, it by no means has universal application.

The only other reason advanced to date for this approach can be gleaned from the recent debate on the House floor on Labor Department appropriations. It was stated that, while a consultative officer "should be an expert in his field and should be knowledgeable of all safety devices rules and regulations . . .,"[2] "such Government officers are only human and even if they possess expertise, even they at times make errors . . ."[3]

We do not disagree with this observation but find it curious that the employer, known in this bill only by his apparent lack of expertise in dealing with the government's own regulations, is presumably still held to a higher degree of expertise than the government.

Subjecting an employer to a monetary penalty for following the bad advice given due to "human error" is difficult to justify.

Apparently, the expert government officer may unintentionally mislead the employer into making unnecessary modifications or may suggest a route of abatement which an employer eagerly pursues while another, less expensive and perhaps more productive, course could be followed. Under H.R. 8618, the employer takes this advice and follows it at his risk. But to give a clean bill of health to an operation and later cite the exact same circumstances for non-compliance and assess a penalty is patently unfair.

And to suggest that the way out of this dilemma is to seek a decision from the Review Commission is not responsive to the problem. To expect the Labor Department to consider in its penalty assessment the employer's good faith and expect the Commission to do the same suggests that the Congress should provide that relief without forcing the payment of legal fees to obtain it.

CONCLUSION

While we support on-site consultation, we feel the bill must be amended as suggested to make the program workable and acceptable. This bill is not a cure-all for the unjustified ills visited on employers by the Act, but it is a worthy beginning.

STATEMENT OF RICHARD B. BERMAN, DIRECTOR OF LABOR LAW FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. BERMAN. Thank you, Congressman.

The gentleman sitting on my left is Hal Coxson, labor relations attorney with the U.S. Chamber of Commerce.

Mr. DANIELS. Spell his name.

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[2] 121 Cong. Rec. 102, June 25, 1975, p. H6155.

[3] 121 Cong. Res. 102, June 25, 1975, p. H6157.

Mr. Berman [spelling]. C-o-x-s-o-n.

Congressman Daniels, I know we are always interested in time during these hearings. Although I have a short statement, I will enter it for the record and try to abbreviate my remarks.

Mr. Daniels. Is there any objection to unanimous consent request that Mr. Berman's statement be introduced in the record in full?

Hearing none, it is ordered. You may proceed to summarize it.

Mr. Berman. Congressman Daniels, Congressman Gaydos, Congressman Beard, as you very well know, we have supported an on-site consultation bill for quite some years.

As I suggested in my prepared remarks, we have in turn always suggested that the bill, if passed, be designed in such a way that it will actually be used.

I support the bill; I support the concept with some, I believe, some small changes, which, if properly implemented, would, I think, make a real worthwhile consultation bill that all businessmen would support.

Mr. Daniels. Mr. Berman, I noticed the first question that you raise with regard to section 21(d)(1) of H.R. 8618.

You mentioned the word "valid" is not defined where a request is made by an employer for inspection.

Do you recommend the word "valid" be eliminated?

Mr. Berman. I am not making a specific suggestion, Congressman. What I am suggesting is what could happen once the Labor Department were to get a hold of this piece of legislation if passed as introduced, and promulgate regulations.

If you remember, back in the 92d Congress, when Bill Steiger introduced several bills on on-site consultation, there was similar language which suggested that the request by an employer must be rather specific. We made the point that, if you were directing this at small employers, at least they were the ones who were in most need of consultation, they were often the very ones who could not make a specific request not knowing what was covered by the act, and therefore couldn't say "Come in and inspect this machine or that area". We then suggested the term not be used as a restriction in the program.

If the employer only wanted one point inspected that would be fine, but, large or small, it ought to be able to open up its doors and suggest to the consultative officers to come in and make that inspection.

I am not suggesting this term would operate in such a way always to deny an employer that, but it might be so interpreted without further direction on your part.

I think it should be noted in legislative history or otherwise, the Labor Department should not restrict the consultative visit because the request is not drafted properly.

Mr. Daniels. I go along with you and we can cover it by our report.

Mr. Berman. The major portion of my testimony I will suggest, with a not-so-self-serving statement, is speculative as far as what the bill would do in a given situation without any further indication of the committee's intentions or some additional language in the bill.

I have laid out scenarios in my prepared remarks, which suggests that once the consultative officer comes on the scene and begins an inspection, if he has alleged that a condition would cause serious injury, and is incorrect, and we have seen many review commission decisions where inspection officers made mistakes, or he suggests an abatement period which is too short, the employer may suffer.

The workings of this bill, when plugged into the act, suggest a scenario where the employer would have to stand in contempt of the consultative officer's recommendations, find himself then thrust into the enforcement procedures of the act where certain appellate procedures are available.

There is not any appellate procedure in this bill. I am not suggesting we need an extended appellate procedure in the consultative bill. But we do need one, for getting a longer abatement period, if we are going to have abatement of serious violations in the consultation bill. Also there is not any way to appeal that the alleged serious violation may be a nonserious violation and therefore it does not even qualify for any followup visit.

I cite to you the appropriations amendment on consultation, which Congressman Steiger offered and which was accepted in the 93d Congress. Congressman Steiger's legislative history, which was accepted by the Congress, to my knowledge was there would only be followup visits in the case of imminent danger.

The Labor Department, unfortunately, did not finalize their rules along those lines and the Labor Department has suggested there are followup visits for alleged serious violations.

But the Congress did, the last time they considered this particular area of the law, suggest that there would only be followup of any kind for imminent danger, which we still support.

I am not suggesting there should not be followup for imminent danger. I suggest in the area of an alleged serious violation the consultative officer will treat them as he treats alleged nonserious violations and leaves the report with the employer.

Were that corrected, much of our opposition would be dismissed.

Mr. DANIELS. What do you mean "in case of a serious violation, treat the employer in the same manner as a nonserious"?

In what way is he treated differently?

Mr. BERMAN. When the consultative officer comes into a plant and sees that a machine is not, in his opinion, in compliance with the standard and also makes a determination, that were this a section 8 inspection he would cite for a serious violation he should not do any more than he will do for a nonserious violation; that is, tell the employer, "You have a hazardous situation here and, as a consultant I suggest you clean it up."

Mr. DANIELS. Ten days or 12 days?

Mr. BERMAN. No; just as in the consultation bill, there is no set abatement period for nonserious violations I suggest there should not be a set abatement period for a serious violation or a violation that he alleges might cause substantial injury or harm.

You are not really talking about serious violations here because "serious violations" is a term of art under the act and there are certain characteristics of a serious violation not contemplated in the bill.

You talk about the injury itself; whereas, under the act, there has to be knowledge of the violation or the employer "should have known." They don't operate synonymously. However, the consultant should not have any followup responsibility for an alleged serious or alleged nonserious.

Mr. **Daniels.** The employer has no responsibility?

Mr. **Berman.** The employer would have no responsibility under this bill. I suggest the employer's responsibility stems from the act.

And, as you suggested, in introducing the bill, the main reason for it was small employers and also some large ones do not have the capacity to hire outside consultants. Costs for outside consultants given some of the standards, for instance, noise standards, call for thousands and thousands of dollars.

I thought from reading your remarks in introducing the bill you were trying to give free advice, the same type of advice one could hire on the outside.

Mr. **Daniels.** I don't comprehend the point, what you are trying to convey?

Mr. **Berman.** If the small employer had the money to hire an outside consultant, he would suffer no further liability. Once the consultant made his report and had given it to the employer.

Under your bill, when the consultant comes, there are certain araes where section 8 enforcement procedure would be triggered.

Mr. **Daniels.** That is right.

Mr. **Berman.** I am suggesting the Labor Department consultant does not fill the void you are suggesting.

Mr. **Daniels.** I don't expect exclusive exculpation from liability under the act. I regret to say to you, as one member of this committee, I would be opposed to that.

Mr. **Berman.** I was very much aware of that when I read the bill, Congressman.

Mr. **Daniels.** We are not giving a first-instance violation excuse here. I do not believe that we should go that far.

The basic theory and philosophy of the OSHA legislation is that we impose a responsibility and if there is violation you are subject to a citation and penalty. We propose to modify it by the committee bill I have introduced by giving the employer an opportunity to request on-site consultation and advice, but that does not excuse or exonerate him from any liability whatsoever, and even if the consultative officer were to give him the wrong advice, it does not excuse him.

Mr. **Berman.** That is, of course, my second troubling point, but before getting to it, I would like to suggest two things: Right now and since 1970, the Labor Department has always maintained that inspection officers should sit off-site and listen to the most horrendous stories of what appeared to be serious violations and that there would not be any danger of a followup inspection.

That has always been the case. You could go in and suggest the most horrendous scene in your work environment, and there would not be a followup violation. They would only consult.

I suggest that concept be transmitted to the worksite.

Mr. **Daniels.** I understand what you are driving at.

Mr. **Berman.** I might add, as Congressman Gaydos suggested, the IRS does a lot of consulting and you can go to them and suggest one of the more intricate tax evasion schemes without disclosing your identity and get advice. There is no penalty as such. You can avoid penalty because you can avoid followup.

To give you an example, not necessarily on the nature of the violation or of the hazard, that gets to be rather emotional, but talking about the problem of the abatement period. If the consultative officer comes in and sees what he believes to be a rather serious condition and I stress believes to be, he may request that this could be cleaned up immediately or within 30 days. Small employers, by their very nature, I think as a rule of thumb, don't have the cash flow of some larger employers and will tend to need, in some cases, rather long abatement periods, periods that may be anathema to the normal inspector when he sees the violation in the shop.

There is no provision in the bill for extending this abatement period. The only thing the employer can do is sit tight, wait, as I say, to find himself in contempt of the consultative officer's recommendations and then be subject to, as you suggest in the bill, appropriate action which heretofore has always been a followup inspection under section 8.

What is one to do when he wants a longer abatement period? I am not suggesting you have intentionally evaded the point, but I think it is a gap in the legislation which must be bridged.

Mr. Daniels. It is a matter of opinion. We disagree again.

Mr. Berman. Perhaps you have felt then, under the act, one should be entitled to appeals of the abatement period, which you had in your original legislation, Congressman Daniels, but you are not giving appeals of abatement periods in the consultative phase.

Mr. Daniels. If that employer should subsequently be cited for violation, he has the consultative officer's report, which he can utilize in the preparation of his defense. It is not going to exonerate him if the enforcement officer finds violation, but it may be used by him in mitigation of any penalty the Secretary may deem to impose.

Mr. Berman. Again, let me suggest this.

Mr. Daniels. Have you heard about the traffic cop reference that Congressman Findley makes reference to? Traffic cops make mistakes, too.

Mr. Berman. I am well aware of it, and so do employers.

Mr. Daniels. So the cited motorist, whether arrested or given a ticket, appears in court before the judge. The cop tells his story and the defendant tells his story and somebody has to make a decision somewhere along the line and whenever we deal with the human element somewhere along the line there is going to be a mistake made.

Mr. Berman. I am suggesting some relief ought to be given for a very short abatement period. What is one to do?

Mr. Daniels. That is a matter of judgment. The Secretary may agree with the employer and he should have had a longer period of time.

Mr. Berman. What I suggest is the employer must agree there must be a section 8 inspection unless you suggest otherwise. That is the way things will work and the way the Labor Department's regulations read under the present consultative regulations.

What happens is a section 8 inspection starts. And I might add, which I am sure you would support, when the section 8 inspecting officer comes into the plant, he will probably inspect the entire premises as opposed to perhaps just one machine which was the subject of the original consultative request. All of the arguments about manpower, efficiency, et cetera, will be made to suggest, when a section 8 compliance officer comes into a plant to follow up a consultative officer's inspection, he ought to be able to inspect the entire premises. Again, you have a disincentive to use the act because of open ended liability.

There ought to be some way to appeal that abatement period. When you speak about getting redress, you have to go all the way up through the Review Commission, and you have to spend legal fees. It is a terrific example of "Catch 22," where you have to spend more money to save the money you are assessed for.

And, demonstrated good faith, which would be read by the uninitiated as perhaps a complete exoneration of penalty doesn't work that way. If you can show you had a consultative officer come in and he gave you his best advice, the good faith reduction in the Labor Department's eyes is worth 20 percent off of a possible $1,000 penalty.

Now, that is all it is worth at best. It may not be worth 20 percent. It is 1 to 20 percent and that can be substantiated by the compliance manual.

Again, you may find a situation where the employer is visited with a vision of a liability greater than that which he would have had had he never called the consultative officer. That becomes a disincentive to use the program. That is what I am suggesting we not do, not give with one hand and take back with the other.

There are not that many situations percentagewise where serious violations are found. Most of the violations percentagewise are nonserious violations and therefore, we suppose that most of what I am suggesting might occur would not happen at a percentage of all consultative activity.

Because of that, it would not be that much of an effort for the committee to accept the fact that in some situations a few serious violations or alleged serious violations will not be followed up on, so as not to create this image of fear for the employer that if he uses this program this open ended followup inspection might occur.

It is going to happen in only a small number of cases. Being it won't happen that often, I suggest the provisions that refer to it are not that necessary.

The objection to $25 fines is ludicrous. It doesn't indicate a lack of enforcement on the part of the Labor Department when you look at what they are fining. I believe they would look ridiculous to fine for much more money because the violations are simple which in turn points up, if I may, another problem.

Mr. **Daniels**. I don't know how many serious violations there are, but the Labor Department will be in here.

Mr. **Berman**. I am sure they will suggest serious violations are a small part of the total enforcement picture.

Mr. **Daniels**. Well, they will give us the figures and I can't argue on that point.

Mr. **Berman**. Less than 10 percent and I say that conservatively, it may be less than 5 percent, are serious violations; so you are addressing a problem here which is not that great.

Mr. **Daniels**. Will you specifically make your recommendations. We have several other witnesses and we are subject to a quorum call call or vote on the House floor; I would like you to precisely enumerate your recommendations to this committee for amendment of the legislation under consideration.

Mr. **Berman**. I will be happy to, Congressman.

Mr. **Daniels**. Proceed to do so.

Mr. **Berman**. Excuse me. I will be happy to.

In the first instance, I suggest the term "valid" be dropped from section 21(d)(1).

I also suggest that in section 21(d) subject to my talking with committee counsel afterward, any reference to serious physical harm or death be dropped from the bill. I think that would cover the problem.

If you drop the proviso found in 21(d)(2)(b), that would take care of the possibility of following up on serious.

Mr. **Daniels**. What page of that in the bill?

Mr. **Berman**. Page 2, it starts at the middle of line 16.

That would take care both of the problem of abatement and the followup on alleged serious?

I also note that in 21(d)(4), where you suggest that an inspection officer, with the Labor Department, shall not be held responsible for the advice given by a consultative officer. Some relief might be suggested, perhaps a directive by the Labor Department, that more than 20 percent can be given to an employer off his penalty if he followed the instructions in good faith of the consultative officer.

It seems patently ridiculous to me to pass a bill like this which suggests an employer knows nothing and the expert, the man who knows the rules and regulations, is sent to the employer, tells him what is wrong and not wrong, the employer follows the directions and then is visited by an inspection officer, who gives a penalty with the employer getting a percentage reduction off of the fine for following bad advice.

There should not be any penalty. You are suggesting continually that the penalty is the incentive to comply. If this man did everything trying to comply, what good is a penalty? He could get as much as an $800 violation at the outside with a good faith effort, and I don't think it is very fair.

If those problems were corrected, I would support the bill unqualifiedly.

Mr. **Daniels**. Have you anything further to add?

Mr. **Berman**. No, sir.

Mr. **Daniels**. The gentleman from Pennsylvania, Mr. Gaydos.

Mr. **Gaydos**. I have no specific questions, but I would like to make a couple of observations and maybe ask you a question.

Are you and I in full agreement that most, if not all, of the requests for consultative services are by a small businessman. It could be some big businessman, but primarily small businessmen, as it usually involves financial inability to hire expert advice to interpret the statute? Do you go along with that?

Mr. **Berman**. I don't know why most small businessmen would use a Labor Department consultant as opposed to an outside consultant.

I can only assume that lack of resources to hire a private consultant figures into a large number of cases; but I would only be guessing.

Mr. **Gaydos**. The reason I asked you is because I find it very difficult to reconcile your position, and may I stand corrected if I am stating it improperly. In most instances the chambers nationally, statewide and locally, usually take the laissez faire attitude of "hands off," we will handle our own business and we will take care of our own complicated problems.

However, when the situation is one of enforcement and possible penalty is involved, the whole philosophy is twisted and it becomes a ploy, and you start asking for exculpatory provisions, "Give us a break; extend it; delay it."

I can't reconcile your positions myself and maybe you can throw some light on it.

Mr. **Berman**. I certainly can.

Congressman Gaydos, our laissez faire attitude operated in 1970 when the suggestion was made not to pass the act.

Mr. **Gaydos**. That is obvious.

Mr. **Berman**. Now that you have done it, all we want to do is understand it. Congressman Daniels is suggesting that, "We are going to let you understand. In some instances it is for free and in some instances we will give a penalty."

I don't think it is too much to ask of the Government, once they pass a rule to help comprehend it. I don't think it reflects on our laissez faire attitude.

Mr. **Gaydos**. Let me respond.

In bringing up my celebrated example in comparison, the IRS statutes, they are very complicated, ten times as complicated, and you get no breaks. You are liable from the time the statute is passed and the amendments thereto, period. There is no exculpatory period and no exceptions and no extension of time and no delay.

When it becomes effective, January 1, 1976, that is it, and you know that is the case. How do you compare it? Where is one different from the other? Particularly this one it seems to me to have more importance because it deals with human life.

Mr. **Berman**. The IRS has a great campaign to educate people that they don't have to go to some of these commercial services for help. The various commercial services that help in preparing tax forms are not unlike a paid consultant in this situation.

I am only asking for the relief from the Labor Department that people are able to get from IRS. To be able to walk in, as they are able to do today to an area office tell the most horrendous story and get a calm and collected answer, and go back home without any fear of a followup.

IRS operates this way and people accept the system. The problem with OSHA is that a large minority of people never accepted the system because they never had seen it as a fair system. This is an attempt to change that and if you change it halfway, then you have only done half the job.

Mr. **Gaydos**. When you are discussing your tax problems with an investigatory agent or in a routine check or voluntary check, you name it, any situation, if you tell them you have not paid your taxes, believe me, you will have someone come along, a collection agent, or you are going to find yourself being the subject of some investigation of some sort and possibly an indictment, you know that.

Mr. **Berman**. If you are talking to an agent who has made it his intention to audit, you certainly are in a far different position than if you go and ask for advice.

Mr. **Gaydos**. I won't dispute that.

Let me ask, Are you and I on the same wavelength and don't you and I both understand in this situation here as long as we provide some type of consultative services of some nature, that you are delaying the effectiveness of this act?

Mr. Berman. I don't agree.

Mr. Gaydos. Don't you and I think along the same lines, that is what the primary, ultimate end is, the delay in enforcement of this act?

Mr. Berman. I don't think so at all, because you are admitting that you are placing in effect a new program.

Now, perhaps you could make that argument.

Mr. Gaydos. I think the act was in existence before 1970.

Mr. Berman. What I suggest is if you put the consultative program in effect and employer A makes no use of it, he has not delayed enforcement of the act and if employer B calls on a consultative officer, he has not delayed it either, because you have the inspection force out there and I am sure organized labor will not let you transfer funds from inspection to consultation.

Mr. Gaydos. Don't you agree, that as sure as you are sitting there, it is impossible for us in any way to legislate an effective force, whether consultative services, or enforcement services, because we could be here for the next 15 or 20 years and not have sufficient personnel available to make visits and we talk about once every 100 years with the existing 1,000 inspectors in the field.

You and I know as a practical matter that if we don't have the threat of some type of financial loss or fine of some sort, you know that practically we can't enforce the act, and you know it. Every businessman knows it.

Mr. Berman. I agree with you if you are going to go on a strict enforcement approach, you will never accomplish the job.

IRS works because people accept the program and see it as one where voluntary compliance is expected; you ought to be trying to direct the acceptance of the act in this instance in the same way.

I believe in putting a program like this into effect for those people with a problem. A person may not have a problem this year, but may build a plant a year from now and want to call in a consultative officer. If he does not accept the act, and views it as a questionable piece of legislation you don't get that kind of cooperation.

Mr. Daniels. Will you yield? There is a lot of talk about IRS, and I don't know whether or not it is being used to confuse the record here; so let us get something straight. Let us assume that Mr. A goes to IRS, asking for assistance in the filling out of his tax return or advice, he receives that advice.

Does that make him immune from filling a false tax return and from prosecution?

Mr. Berman. No, sir; it does not.

Mr. Daniels. Well, why all of the talk about IRS and comparing it with this act?

Mr. Berman. Well, we are only making the comparison of no followup; at least, I am; no followup inspection by the IRS. What if I decide to claim a dog as a dependent?"

Mr. Daniels. There is no guarantee that IRS will not come in.

Mr. Berman. Nothing that triggers it, but you have——

Mr. Daniels. How?

Mr. Berman. The consultant says you have a violation, and the employer says he doesn't. He stands pat. He gets a followup.

If I go to IRS and say, "I want to claim my dog as a dependent," and they say, "You can't do it," I can declare the dog and if I put down the name as "Jane," I have no greater chance of an inspection or audit by IRS than had I played the game properly.

Mr. Daniels. You have a different situation and this act is intended to help the working man and woman to protect their health and safety and we are primarily concerned about that.

Mr. Berman. But the consultative bill, is different. Congressman Daniels, you said in your remarks, for instance, that we will not have employees on walk-arounds. This is a small, a very, very small gratuitous gift to employers under the act. You are, at least by your remarks, trying to do something for employers.

Mr. Daniels. Mr. Gaydos.

Mr. Gadyos. Mr. Berman, would you agree with me that the primary and probably exclusive purpose of providing consultative services is to assist the individual businessman involved, and it is not by any stretch of the imagination, directly or indirectly, to be interpreted as, one, to give immunity or to give some type of delay?

Isn't that the reason why we provide this consultative service here?

Mr. Berman. To give assistance. I have not suggested any immunity and I have not suggested real delays. If you pass the bill and nobody uses it, where are the delays?

If you pass the bill and everybody uses it, where are the delays? You still have your own enforcement mechanism.

As I understand it, somebody could walk in the day after the officer is there, conduct a section 8 investigation, and do everything he would have done had the employer never asked for the consultation.

Mr. Daniels. Walk in the same day?

Mr. Berman. And it would not be affected by the fact that he had a consultative visit. There is no delay and I have not asked for anything except to say when you suggest good faith, when you suggest that an employer has followed the advice of the consultative officer, and has done everything he requested, you should not on one hand say, as you did in the record, that inspectors are human so they make mistakes and on the other hand, say the employer who follows the mistake, should cough up the money. That does not seem fair to me. Whenever someone tries to do away with first-instance sanctions you claim you need it as an incentive to comply. If the employer did everything you wanted, why penalize him? Because he was human?

Mr. Daniels. I don't want to take from him because he is human.

We obviously don't agree along those lines because I don't think you should make an attempt to create some type of immunity, as you have suggested. It is not the case in most other statutes or enforcement laws.

Mr. Berman. Are you trying to collect penalties or trying to get the workplace into shape? The immunity I suggest is immunity from penalty, not immunity from compliance with the act.

Mr. Gaydos. Well, let me respond on what we are trying to accomplish. The chambers of commerce, national, statewide, and local, are not helping us attain those ends. Let me give it to you straight, and I will be frank with you; these are nothing but dilatory tactics and they are obstructionist.

You asked and I responded.

Mr. BERMAN. If I may respectfully say so, sir, I don't believe that you have really understood what I have been trying to say.

It may have been my inability to convey it properly.

We are not looking for exculpatory provisions; we are not looking for anybody to get out from underneath the act.

In this piece of legislation, I am only suggesting you do what you appear to be doing. When you say "good faith," that you say it as everyone interprets it.

If someone has done everything they could, they shouldn't be penalized. That is all I suggest in an exculpatory provision.

Mr. GAYDOS. I yield back my time.

Mr. DANIELS. I recognize the gentleman from California, Mr. Hawkins; any questions?

Mr. HAWKINS. I am sorry, I didn't hear the presentation, and I apologize to the subcommittee and Mr. Berman.

I thought certainly we were trying to help the businessman and businesswoman.

If we are not, I would hope we can get together on some changes which would make it acceptable.

I think that all of us are trying to do what we feel is right in trying to provide some consultation.

So I hope that we will do this in the spirit of trying to amend the bill, if necessary, to meet the objections.

As I say, I have not had opportunity to read what the objections are, but I would hope that we don't lose communication so that we can't at least work out some worthy compromise.

I have nothing else to say, Mr. Chairman.

Mr. DANIELS. The gentleman from Rhode Island, Mr. Beard. Any questions?

Mr. BEARD. Yes, Mr. Chairman.

This bill basically helps the small businessman and by helping the small businessman, it helps the worker and that is good enough for me. It is going to work.

Mr. DANIELS. Mrs. Smith, do you have any questions?

Mrs. SMITH. I am sorry, I didn't get to hear the testimony, so I don't have any questions.

Mr. DANIELS. Thank you.

Do I get your last point that was developed in your discourse with Congressman Gaydos, that you are seeking a first-instance sanction?

Mr. BERMAN. No, sir. You already have first-instance sanctions. All I am seeking is what I requested earlier in the area of penalty and I am reserving my response to your question to that.

When someone complies or attempts to comply with what a consultative officer has suggested, on a followup inspection, if there is one, and the working conditions have not changed, you are talking about apples and apples; that there not be any penalty assessed in the first instance. He has done what the Labor Department told him to do.

I don't think the Labor Department can take refuge in their mistakes.

Mr. DANIELS. I just wanted that point clear. Thank you.

Mr. BERMAN. Thank you, Congressman.

Mr. DANIELS. Our next witness is Mr. James D. "Mike" McKevitt of the National Federation of Independent Business.

STATEMENT OF JAMES D. McKEVITT, WASHINGTON COUNSEL TO THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. McKEVITT. Good morning, Mr. Chairman and members of the committee.

I would like to respectfully request that the Chair as announced incorporate my remarks in their entirety and I will address myself to some brief remarks in the interest of the fact the House is in session.

Dr. DANIELS. I ask unanimous consent that the statement of Mr. McKevitt be introduced in full in the record at this point.

Any objection?

Hearing none, it is so ordered.

[Statement of James D. "Mike" McKevitt follows:]

PREPARED STATEMENT OF JAMES D. "MIKE" McKEVITT, WASHINGTON COUNSEL TO THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman, members of the Committee, it is a distinct pleasure for me to appear before you again today to discuss the views of the National Federation of Independent Business (NFIB) and its 427,000 member firms with respect to on-site consultation for small employers under the Occupational Safety and Health Act.

NFIB firmly believes that the goal of OSHA—preventing the useless, job-related loss of health, limb and life—will never be reached until the present distrust and suspicion of the law by the small business community is eliminated. We view the establishment of an effective and equitable on-site consultation program as an important step in this direction and we strongly feel that this program must be successful or OSHA will not be successful. To emphasize this point, let me reiterate what I said in my last appearance before this Committee. "If the consultation program is not effective, if consultation is not sought by employers, if consultation is not likely to lead to the identification and correction of the same hazards that an inspection would find, then the consultation program will be a failure and the small businessman will be vindicated in his feeling that the bureaucracy is picking on him. In essence, if consultation is not successful, neither is OSHA."

OSHA has been a point of controversy and a method of measuring business or labor loyalty for too long. It is time to bury the old antagonisms that surround it—it is time to take it out of this category and make it a workable program.

NFIB is committed to making OSHA more workable and more equitable. We are very concerned with safety in the workplace and we have been working closely with organized labor, this Committee, and the Department of Labor for some time toward this end. We have stressed positive points, such as on-site consultation, in our publications and testimony, and we are now in the process of distributing the Department of Labor's new Standard Digest, a very valuable document, to our entire membership. We are also deeply aware of the constructive attitude exhibited by the Chairman and members of this Subcommittee and of the hard work done by the staff. You have done a great deal to create a climate conducive to reasoned discussion of the issue and we commend you for the sound, positive steps you have taken.

The result of all this hard work and cooperation became clearly evident last Tuesday when the Chairman and the Ranking Minority Member of this Subcommittee introduced H.R. 8618, a bill to set up a much needed on-site consultation program for small employers. While we do have some reservations about H.R. 8618, NFIB feels it is a move in the right direction and will work for its enactment.

When I appeared before the Subcommittee last April to discuss on-site consultation, I innumerated four major points that NFIB felt would be needed for a successful consultation program. They were:

1. Adequate funding;
2. Qualified consultation personnel;
3. Department of Labor jurisdiction over both consultation and compliance; and

4. Cooperative attitude in the administration of the program. We still believe the incorporation of these crucial points will be essential to any successful on-site program and we urge that the Subcommittee cover them in its report or in the legislative history of the amendment.

After studying H.R. 8618, we have noted several other points that cause us some concern. In the order of their importance they are:

1. The non-binding nature of the consultant's advice on the compliance officer;
2. The need for making the program available in all 50 states with 100 percent federal funding; and
3. The need to clarify an "imminent danger" situation vis-a-vis one in which there is "substantial probability" of "death or serious physical harm."

Since this is a matter of some importance, I would like to briefly amplify NFIB's concern with each of these three points.

NFIB's greatest concern with H.R. 8618 is the non-binding nature of the OSHA consultant's advice on the OSHA compliance officer. Section (d)(4) states, "advice given during a consultative visit shall not be binding on the Secretary in the event of any inspection of the workplace." In essence, this language will make it extremely difficult to convince the small businessman that on-site consultation is nothing more than a bureaucratic ploy or a "Catch 22" type of situation. Let me explain.

Under the present language it would be entirely possible for a small businessman to request a consultative visit, bring his workplace into compliance with the consultant's advice, and still be inspected, cited and fined the week after he complied with the consultant's advice for a violation the consultant either missed or failed to mention. Now, we are not suggesting that the business be allowed to avoid compliance with the law, but we strongly believe that it should not be cited and fined after a sincere effort to comply with the law.

It would also be possible for the consultant to advise a firm to make major and costly alterations in its equipment or physical facility. If the inspector is not bound by this advice, he could reverse it or demand additional, new changes that could needlessly double or triple the cost of compliance. On top of this the employer could be cited and fined for changes or equipment suggested by the consultant. This does not seem to be much of an incentive for the small businessmen to seek advice and comply with the law.

We are fully aware that a consultant's advice cannot be binding in situations where the workplace or working conditions are constantly changing and that just because a consultation was requested it does not mean the employer complied with the consultant's recommendations. But there are workplaces and types of businesses, such as retail and service firms, that are relatively safe and these should be given as much incentive as possible to come into compliance. Incentives should also be given to employers who request consultations to implement the consultant's recommendations.

M. Chairman, I realize that this cannot be taken care of through broadly constructed, all inclusive language. It would have to be spelled out in detail in the amendment, but spelling it out in detail may be the only answer and we strongly urge you to consider doing it when you mark-up the on-site bill.

NFIB is also concerned that any on-site consultation program be equally available in all 50 states with 100 percent federal funding. We feel that this is essential because of the present unsettled condition in many state capitols and the different local pressures that could be brought to bear on the program. A federally run and coordinated program would guarantee consistency and availability to small businessmen across the country. The intent of Congress to provide this type of program can be made clear on the Floor in the legislative history of the amendment.

Our last concern is the controversy that has arisen over Section (d)(2)(B), which relieves the consultant of his responsibility to maintain the integrity of his report "if there is substantial probability" of "death or serious physical harm to employees." This new language seems to have confused rather than clarified the issue. NFIB sees a real need to further clarify the difference or relationship between an "imminent danger" situation and one in which "substantial probability" is present. Perhaps the best way to shed greater light on the types of situations covered would be to give graphic examples of each on the Floor. Then, the Department of Labor would find the legislative history useful in issuing its guidelines.

Mr. Chairman, before concluding, there is one more point that I would like to respectfully ask you to consider. NFIB believes that small business faith in the proposed on-site consultation program would be boosted considerably if the "may" in the last sentence (page 3, line 11) of Section (d)(4) was changed to "shall". In its present form the intent of this section could be easily negated by the Secretary for any reason or whim that strikes his fancy. This degree of freedom or discretion is much too wide and we urge you to restrict it by incorporating the change we suggest.

NFIB is convinced that an effective on-site consultation program is essential to equitable enforcement of OSHA and we will do everything we can to assist the Subcommittee in writing and enacting legislation that will set up such a program. Our only concern is that this legislation be effective and fair to our member firms and the entire small business community.

Mr. Chairman, I appreciate this opportunity to appear here today. If you or the members of the Subcommittee have any questions, I will be happy to try to answer them.

Mr. McKEVITT. Mr. Chairman and members of the subcommittee, I would like to point out several impressions of small business across the country.

National Federation of Independent Business represents 420,000 member firms over a wide variety spectrum of mom and pop grocery stores to large independent businesses. We have a broad spectrum of retailers, wholesalers, distributors, manufacturers, and construction industry, and I think we have a pretty good mood and indication by a mandate we sent out eight times a year, by the calls we get, letters we get, by talking for example, as I did to small businessmen and businesswomen in Colorado last week, and in talking to them in Atlanta, Ga., yesterday.

I think the best impression they have is, "Let us get on."

They are very pleased by the fact of your legislation; they want on-site consultation. They want it for assistance and not for delaying purposes. They cannot afford in most respects to pay for outside professional help. The side benefits are obvious.

First of all, in a small business, employees are a key factor. In the recession recently we discovered small business is a bigger buffer than larger business because of the fact there is more loyalty to employees and more of a carryover.

If an employee is injured in a small business, it has a great impact on this particular business. The construction industry as a small business is first to admit your highest incidence of injury or death is in the smaller construction industry and they are trying to perfect that.

In going through a construction plant, for example, in Cortez, Colo., last Friday, one of the owners proudly took me through to point out some changes they made, the eyewash, different aspects, emergency wash and safety factors in compliance with OSHA.

Basically, we strongly support your legislation and commend you for the action you have taken in this regard.

I feel this way, before serving in Congress, I served as a district attorney, and one thing I learned in law enforcement over a 4-year period is that law enforcement, effective law enforcement, depends upon the attitude of the enforcement agency.

I, for example, have found much more quality of law enforcement in my city of Denver than in some areas of the eastern part of the United States, because the temperament and education must go with it.

After I left Congress, I served as Assistant Attorney General of the United States, and I found there, if you were to create two agencies or two sections here within the Department of Labor, I think that much of the structure within labor itself, if you had two Deputy Assistant Secretaries, one in Compliance and one in Consultation, and had section chiefs in each, they would be inclined to resolve many of these problems as we did in Justice, where they will interrelate and they will discuss these themselves.

I think, as a result, it is a matter of putting it into effect, funding it properly and getting on and letting the Department of Labor work out many of the details.

This is one of our concerns; we hope it will be adequately funded for the 50 States.

Take Colorado, for example, where they have the State legislature there that is badly crimped, the OSHA State plan as a result is really shallow. So the question arises: What do we have? Where do we stand?

We are in a quandry in this situation. This is why we urge strong Federal funding as far as onsite in all 50 States and this is one of our biggest concerns.

I don't think, and I think I speak for the vast majority of small business people across the country, they are seeking it as a delay. The word is out, of course, on the abatement aspects, the appeals, "Get a lawyer, do this and that," but most of them can't afford lawyers and this is why they can't avail themselves of this service under income tax.

The main thing is they want to resolve it and more and more they realize the benefits. I think once and for all, we ought to get this out of the realm of political issues. Small business people have basic problems, gaining capital, getting started, keeping going, tax reform, a number of problems of this nature.

I don't think they want to cope with or make this an ongoing issue. They are sick of it. I think we have to settle this unrest, "horror stories," about OSHA inspections, and so forth.

I think the best way to do it is with this legislation, to move the subcommittee to set up an effective on-site consultation program.

Now our association has worked effectively with the Department of Labor in the last 6 months. We are distributing for example, the Standard Digest, which is in a nutshell a little summary of OSHA regulations on general industry and the construction industry. It will go out to all members in the next 30 days.

I furnished them samples last week in Colorado, and they grabbed them.

This is where your foreman can carry the booklet around in their pocket, so it is an attitude of working with the Department of Labor and with Congress, taking this out of the realm of political issues and going on from there.

I realize the fact some points have been covered, so I won't delay on those points, but just bring them up as a matter of concern.

One of the things that has been raised is the matter of concern over imminent danger versus substantial probability of death or serious physical harm.

Perhaps an answer to it would be that labor could bring examples of what they see as basic concerns and those examples could be cited on the floor, so far as legislative history is concerned as guidelines to Department of Labor, otherwise, we go on and continue to be embroiled in the argument of semantics.

I think the best way to resolve it is by competent personnel and legislative history.

I think another thing that would be of benefit would be to change the word "shall" to "may" in the provision noted in my testimony there so that with the consent of the employer at least the consultation report would be taken into consideration in considering the good faith of the particular employer on the question involved, or this would give equal balance to consultation in this regard to your giving consideration there.

I realize the arguments on the first-instance violation have been pretty well resolved by the mood of the committee. I think the answer to that is "Let's try it," the minimum thing is, "Let's have an effective on-site consultation program," because I can tell you in most small businesses they are equally concerned about the life and limb of their employees because it is a fact that it is usually their life and limb as well, and it is also dealing with employees who have been with them a great number of years.

That is in essence the feelings of our association, Mr. Chairman, and I respectfully leave myself open to questions the members may have.

Mr. DANIELS. Mr. McKevitt, what is your view with respect to a first-instance violation even after consultation advice was sought and such advice given to the employer?

Mr. McKEVITT. What would help settle the water is if the employer knew the consultation was taken into effect; that is, consideration was given to it.

Mr. DANIELS. In other words, the report of the consultative officer would be utilized by the Secretary in mitigation of any penalty imposed.

Mr. McKEVITT. Right; yes.

Mr. DANIELS. But you are not recommending a first-instance violation shall be excused?

Mr. McKEVITT. I don't think I would like to answer that from a practical standpoint.

If we did excuse it, it would terribly weaken the act.

Mr. DANIELS. Would it take the steam out?

Mr. McKEVITT. I can see that and you would run into jeopardy as to passage in the House and Senate.

The fact is, basically, the thrust of the law is good, there you have to deal with the administration of the act, and we have to be practical minded about it, but we respectfully urge that consideration be given to the consultative report.

I testified previously I think the consultant should be of equal caliber and pay as inspector, and I think doing this and having the interchange and having joint jurisdiction under the Department of Labor, you will solve a lot of problems in this regard.

Mr. DANIELS. Is it correct to say that you support, your organization supports H.R. 8618, which I introduced with other cosponsors?

Mr. McKEVITT. That is correct. As I say, the suggestions included therein, it is not an either/or theory provision, but it is in the aspect that we respectfully urge you to consider those points, but we are open to discussion on that.

But, yes.

Mr. DANIELS. Thank you for a fine statement.

The gentleman from Pennsylvania, Mr. Gaydos.

Mr. GAYDOS. I welcome my friend and former colleague here. I will ask you what in your estimation would constitute effective on-site inspection?

How many people are necessary and how much money; have you thought about it?

Mr. McKEVITT. Yes. It would be quite a large staff.

The fact is, it is like preventive maintenance on equipment and preventive measures for the safety of the employees, and I think it is a good investment.

Mr. DANIELS. You are cognizant, I am sure, of the difficulty we have had in funding or influencing the administration to properly utilize inspection personnel and administrative personnel.

It goes beyond saying that as of now, we have roughly 1,000 inspectors in the field, roughly of a total of 1,700, but many of those are inside doing paper and administrative work, and there are out in the field roughly 1,000 people who are trying to enforce this act.

How could we get a better track record than that if we start talking about, as you properly put it, effective onsite inspection?

Mr. McKEVITT. I think it is a question of how many dollars you want to spend on safety. I think that you may need more inspectors and you may need more consultants.

At the same time, there are other remedies. For example, I suggest in previous testimony the 800 direct-dial system as a device, but I think, first of all, you have to settle the waters and I think we would be irresponsible if we do not try to settle the waters.

In other words, "Try it and you will like it." That has to come across, first of all, and then from this aspect, and maybe I am wrong, strictly from the fiscal aspect, your insurance rates will go down if you increase safety conditions in your operation.

This is also true, where you can call in, much of this can be resolved by an 800 direct-dial system into a regional office. One of the Department of Labor officials pointed out they thought it was a good program, but the Assistant Regional Director thought it was too cumbersome and it might be cumbersome, but it would also save a lot of personal visitations.

Mr. DANIELS. I wanted your opinion because I realize you are privy to a lot of information you would need in order to come up with a considered judgment as to how much personnel.

Mr. McKEVITT. I don't have the specific numbers, Mr. Congressman.

Mr. DANIELS. Thank you very much for your appearance.

The gentleman from California.

Mr. HAWKINS. No questions.

Mr. DANIELS. Thank you very, very much, Mr. McKevitt. We appreciate your coming and giving us the benefit of your testimony.

Mr. McKEVITT. Thank you, Mr. Chairman.

Mr. DANIELS. Our next witness is Mr. Benjamin Rocuskie, chairman of the National Society of Professional Engineers.

Mr. Rocuskie, you may proceed, sir.

[Prepared statement of Benjamin Rocuskie follows:]

PREPARED STATEMENT OF BENJAMIN ROCUSKIE, THE NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

The National Society of Professional Engineers, a nonprofit organization headquartered in Washington D.C. consisting of nearly 70,000 individual members who are engaged in virtually every phase and aspect of engineering practice, and structured throughout the country on a state and chapter affiliated basis, welcomes this opportunity to present views in connection with this Subcommittee's inquiry into the functioning of the 1970 Occupational Safety and Health Act.

My name is Benjamin D. Rocuskie. I am a professional engineer licensed by the State of Pennsylvania, presently serving as that State's Assistant Chief Engineer, and as Director of Design for the Pennsylvania Department of Transportation. I am an active member of the National Society of Professional Engineers and I chair the Society's Committee on OSHA and Product Safety. In addition I have previously served a three-year term as Chairman of the Society's Professional Engineers in Government Practice Division.

In June of 1974, I appeared as spokesman for the National Society of Professional Engineers before a Subcommittee of the House of Representatives on the issue of OSHA amendment. And exactly one year ago today acting in similar capacity I presented a statement to a Subcommittee of the Senate on the question of insuring OSHA's optimum operation. In both instances engineers recommended revision to provide for on-site consultation visits.

I am most pleased to be here today again speaking for these engineers, to endorse H.R. 8618. And if you will permit a somewhat personal comment, we feel a sense of identifiable pride arising out of the recognition of one of our recommendations.

Engineers firmly believe that voluntary compliance can best implement the intent of OSHA. Experience has demonstrated that skepticism concerning OSHA's worth has arisen out of the enforcement activities of the Act; indeed, downright rejection has appeared in many instances. And this enforcement has even developed fear and indignation by many businessmen toward OSHA. The massive rules, regulations and standards have resulted in numerous cases in generating more confusion than safety on the part of the American employer especially the small businessman. On-site consultation visits will provide a giant step forward toward voluntary compliance.

It is fair, we think, to note that under present conditions employers refrain from asking for consultations mainly because inspectors observing worksite violations issue citations and propose penalties. Maintaining a climate which discourages employers from asking what they should or should not do to comply with the Law and thus implement congressional objective actually produces an effect opposite to that intended.

Engineers believe the Law must be revised so as to permit employers to request on-site consultations, and that inspectors responding to such requests be limited to matters specified by the employer in the visitation request and be prevented from issuing citations during the course thereof. This procedure would supply business leaders with the best quality opportunity to learn the nature of any compliance deficiency, and it would permit them to develop appropriate workplace changes.

To afford our employers this quality opportunity, however, we must have consultants experienced in safety. They must also have a practical knowledge of the industry, its machinery, and work habits. A practical approach to consultation should be the hallmark.

To advise a machine shop employer that a magnetic starter is required on all electrically-powered equipment in order to prevent inadvertent turn-on when power failure is corrected, for example, should not include hand drill presses. Such a procedure would be somewhat ludicrous. In other words, the consultant must be able to recognize the type of equipment and its needs—not just look at specific words in the safety standards. Recommending certain safety equipment on machinery, such as forging hammers or presses, without knowing whether the machines can take the revisions, to cite another example, would certainly decrease the credibility of the consultant and eventually the program of on-site consultations.

It goes without saying that the consultant must be good to warrant the expenditure. Congress must be cognizant of the quality needed and insure that the administrators promulgate appropriate qualifications for consultants.

On-site consultation should encourage voluntary compliance and not complement enforcement procedures. This is another concern of engineers. H.R. 8618 proposes to require the consultant to notify the appropriate OSHA area office if an employer does not correct a condition in a reasonable time when that condition might result in death or serious physical harm but is nevertheless not an imminent danger as defined in the Act. This requirement is definitely in the realm of citation-giving. It can be counted on to cause a loss of validity and rapport between consultants and employers.

On the other hand, no one can fault a consultant who institutes procedures under Section 13 to counteract imminent dangers. And, if an employer will not correct them, we agree that the employer should most certainly be cited. In the case of other hazards amounting to less than imminent danger situations, we do not believe that the consultant should be authorized to "blow the whistle."

One final comment deals with the appropriation to be authorized for this program. It is doubtful that more than two consultants per state will be able to be in operation in the first year. Even with the maximum funding of $8 million for the third year, the Federal Government will only be able to field five or six consultants per state. This means either that Congress will have to appropriate more money for on-site consultations or declare a moratorium on enforcement and use the Compliance Officers as consultants. Perhaps, as an alternative, Congress could see fit to allow the appropriation to be used as grants to local chapters of safety-oriented organizations to provide some "community or public" service. In this manner, Congress could get not only quantity, but also get experienced people for the money spent.

We would respectfully repeat engineering's offer to provide whatever assistance the Congress might find useful in improving this most important field of law. On our own initiative, we will, from time to time, attempt to supply engineering thinking on various aspects of OSHA's administration where we perceive genuine problems to exist.

We are grateful for the opportunity to have appeared here today, and we thank you for entertaining our suggestions.

STATEMENT OF BENJAMIN ROCUSKIE, THE NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Mr. ROCUSKIE. Thank you, Mr. Chairman.

I would like very much if you could enter our statement into the record and also for brevity this morning, I would also like to read it because it is a short statement, and I think I can make it read fast and save time.

Mr. DANIELS. Are you going to read the statement itself or are you going to summarize it?

Mr. ROCUSKIE. I will read it if you don't mind.

Mr. DANIELS. You may proceed then.

Mr. ROCUSKIE. The National Society of Professional Engineers, a nonprofit organization headquartered in Washington, D.C., consisting of nearly 70,000 individual members who are engaged in virtually every phase and aspect of engineering practice, and structured throughout the country on a State and chapter affiliated basis, welcomes this opportunity to present views in connection with this subcommittee's inquiry into the functioning of the 1970 Occupational Safety and Health Act.

My name is Benjamin D. Rocuskie. I am a professional engineer licensed by the State of Pennsylvania, presently serving as that State's assistant cheif engineer, and as director of design for the Pennsylvania Department of Transportation. I am an active member of the National Society of Professional Engineers, and I chair the society's committee on OSHA and product safety. In addition, I have previously served a 3-year term as chairman of the society's professional engineers in Government practice division.

In June 1974, I appeared as spokesman for the National Society of Professional Engineers before a subcommittee of the House of Representatives on the issue of OSHA amendment. And exactly 1 year ago today, acting in similar capacity, I presented a statement to a subcommittee of the Senate on the question of insuring OSHA's optimum operation. In both instances, engineers recommended revision to provide for onsite consultation visits.

I am most pleased to be here today, again speaking for these engineers, to endorse H.R. 8616. And if you will permit a somewhat personal comment, we feel a sense of identifiable pride arising out of the recognition of one of our recommendations.

Mr. Chairman, I also realize that others have testified for on-site consultations and are also laying claim to this, too.

Engineers firmly believe that voluntary compliance can best implement the intent of OSHA. Experience has demonstrated that skepticism concerning OSHA's worth has arisen out of the enforcement activities of the act; indeed, downright rejection has appeared in many instances. And this enforcement has even developed fear and indignation by many businessmen toward OSHA. The massive rules, regulations, and standards have resulted in numerous cases in generating more confusion than safety on the part of the American employer, especially the small businessman. On-site consultation visits will provide a giant step forward toward voluntary compliance.

It is fair, we think, to note that under present conditions employers refrain from asking for consultations mainly because inspectors observing worksite violations issue citations and propose penalties. Maintaining a climate which discourages employers from asking what they should or should not do to comply with the law, and thus implement congressional objective, actually produces an effect opposite to that intended.

Engineers believe the law must be revised so as to permit employers to request on-site consultations, and that inspectors responding to such requests be limited to matters specified by the employer in the visitation request and be prevented from issuing citations during the course thereof. This procedure would supply business leaders with the best quality opportunity to learn the nature of any compliance deficiency, and it would permit them to develop appropriate workplace changes.

To afford our employers this quality opportunity, however, we must have consultants experienced in safety. They must also have a practical knowledge of the industry, its machinery, and work habits. A practical approach to consultation should be the hallmark.

To advise a machine shop employer that a magnetic starter is required on all electrically powered equipment in order to prevent inadvertent turnon when a power failure is corrected, for example, should not include hand drill presses. Such a procedure would be somewhat ludicrous. In other words, the consultant must be able to recognize the type of equipment and its needs—not just look at specific words in the safety standards. Recommending certain safety equipment on machinery, such as forging hammers or presses, without knowing whether the machines can take the revisions, to cite another example, would certainly decrease the credibility of the consultant and eventually the program of on-site consultations.

It goes without saying that the consultant must be good to warrant the expenditure. Congress must be cognizant of the quality needed and insure that the administrators promulgate appropriate qualifications for such consultants.

On-site consultation should encourage voluntary compliance and not complement enforcement procedures. This is another concern of engineers. H.R. 8616 proposes to require the consultant to notify the appropriate OSHA area office if an employer does not correct a condition in a reasonable time when that condition might result in death or serious physical harm but is nevertheless not an imminent danger as defined in the act. This requirement is definitely in the realm of citation-giving.

Mr. Chairman, in previous statements to Congress and to committees, the NSPE has endorsed the first-instance citation. This is not to be confused with our previous positions. We do believe in first-instance citations, but by enforcement officers and not by consultants. It can be counted on to cause a loss of validity and rapport between consultants and employers.

On the other hand, no one can fault a consultant who institutes procedures under section 13 to counteract imminent dangers. And, if an employer will not correct them, we agree that the employer should most certainly be cited. In the case of other hazards amounting to less than imminent danger situations, we do not believe that the consultant should be authorized to blow the whistle.

One final comment deals with the apporpriation to be authorized for this program. It is doubtful that more than two consultants per State will be able to be in operation in the first year. Even with the maximum funding of $8 million for the third year, the Federal Government will only be able to field five or six consultants per State. This means either that Congress will have to appropriate more money for on-site consultation or declare a moratorium on enforcement and use the compliance officers as consultants. Perhaps, as an alternative, Congress could see fit to allow the appropriation to be used as grants to local chapters of safety-oriented organizations to provide some community or public service. In this manner, Congress could get not only quantity, but also get experienced people for the money spent.

We would respectfully repeat engineering's offer to provide whatever assistance the Congress might find useful in improving this most important field of law. On our own initiative, we will, from time to time, attempt to supply engineering thinking on various aspects of OSHA's administration where we perceive genuine problems to exist.

We are grateful for the opportunity to have appeared here today, and we thank you for entertaining our suggestions.

Mr. DANIELS. Well, Mr. Rocuskie, I want to thank you for a very fine statement and for your endorsement of this legislation. I would also like to compliment you on your previous recommendations to the Committee on legislation along this line.

I have no questions, but we might have questions from our colleagues and I therefore recognize the gentlewoman from Nebraska, Mrs. Smith. Do you have any questions?

Mrs. SMITH. Yes. Actually, Mr. Chairman, I have one, but first, I would like to commend you for your entire statement and especially for the section on page 2, where you speak of the administration of OSHA and how it has aroused both fear and indignation on the part of many businessmen.

I know because I see it in my district, and I heard of many complaints.

Now, may I ask you at the top of page 3, where you suggest that requests be limited to matters specified by the employer, and I am thinking in the case of many small businesses the employer would not know exactly in what area he might be out of compliance and could you illustrate on what you mean on that point a little bit?

Would you say an inspector responding to such requests be limited to the matters specified by the employer?

Mr. ROCUSKIE. Yes, ma'am. I would say that in some workplaces, and now we are talking more of the larger businesses where there may be many areas that an inspector could come in or consultant could come in and advise the employer, and because perhaps he has been working in certain areas and he saw other facilities that have had the benefit of either some safety program or has been reviewed by a compliance officer there would be no need to have the consultant going through the entire plant.

Mrs. SMITH. Thank you very much.

I have nothing else, Mr. Chairman.

Mr. DANIELS. Thank you, sir.

Mr. ROCUSKIE. Thank you, Mr. Chairman.

Mr. DANIELS. That concludes today's hearing and the committee will adjourn until tomorrow morning in room 2261, at 9:30 o'clock.

[Whereupon, the committee recessed to reconvene on Wednesday, July 23, 1975, in Room 2261, at 9:30 a.m.]

ON-SITE CONSULTATION HEARINGS, OCCUPATIONAL SAFETY AND HEALTH ACT

WEDNESDAY, JULY 23, 1975

House of Representatives,
Subcommittee on Manpower,
Compensation, and Health and Safety
of the Committee on Education and Labor,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m. in room 2175, Rayburn House Office Building, Washington, D.C., Hon. Dominick V. Daniels (chairman of the subcommittee) presiding.

Members present: Representatives Daniels, Hawkins, Gaydos, Beard, Risenhoover, Esch, and Mrs. Smith.

Staff present: Daniel Krivit, counsel, Denniese Medlin, clerk, Susie Nelson, legislative associate, and Richard Mosse, minority assistant counsel.

Mr. Daniels. The subcommittee on Manpower, Compensation, and Health and Safety will come to order.

Our first witness on this issue of on-site consultation will be the Hon. Jerry Litton, my distinguished colleague from the State Missouri.

STATEMENT OF HON. JERRY LITTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. Litton. I appreciate the opportunity to testify this morning in support of my bill, H.R. 609, which I believe will provide a constructive solution to the problems that small businessmen have faced in complying with the OSHA Act of 1970.

I am well aware that my bill is not the only approach suggested; that bills have been introduced both by members of this subcommittee and by others.

I have benefited from studying these alternative approaches, but I would suggest to you that, when the problem is properly analyzed, and when we take account of the ligitimate reservations that have been expressed to the idea of giving the Secretary of Labor consultative authority, you will find that my bill deserves consideration.

I think we are all familiar from the mail that we have received with the difficulties faced by small business in complying with the complex regulations that have been issued under that act. Both from past hearings and from your intimate acquaintance with the operation of the program you are fully aware of the legitimate problems that have been raised by small businessmen.

As it now stands, many an honest businessman who sincerely wants to insure that he is living within the law must either hire an expensive consultant to advise him whether or not he is in compliance, or he would have to contact his area OSHA representative for advice and consultation. If he chooses the latter of these alternatives, under the present OSHA law, an OSHA inspector who visits a worksite for whatever reason must cite the owner of the firm for any violations of the law (even when such a visit is requested by the owner of the firm for purposes of consultation). Thus, either way the businessman goes, either by hiring the expensive consultant or by requesting help from OSHA, he is going to be penalized for his honesty. Whereas, the businessman just across the street who selects not to hire the consultant, nor run the risk of citation by inviting an inspection of his facilities is in most cases rewarded for his lack of cooperation and apparent dishonesty.

The basic problem is simple to state but difficult to solve. The problem is that occupational health and safety is a complex matter but that the small businessman neither has, nor can afford to hire, the technical experts necessary to deal with these complex matters. The complexity of occupational health and safety is shown by the sheer bulk of the regulations; by the fact that a list of toxic substances runs for over 500 pages; that many of the standards that have been issued can be understood only by engineers or industrial hygienists.

Some people might think this is an exaggeration—but let us take a simple example. You are a small businessman operating a warehouse which has a loft you use for additional storage space. Your employees have to go into the loft fairly regularly and you want to make sure that your ladder is in compliance with the safety regulations. You are persistent and in due course you find out that the regulations governing ladders are found at 29 CFR 1910.25 to 1019.28. You have a friend who has access to the Code of Federal Regulations and you read the regulations in order to find out whether your present practices are safe, and, if not, what you have to do to come into compliance. You have been using portable wood ladders for access into the loft and you discover that for a sectional ladder, the section shall develop a stress no greater than a specified amount per square inch (varying with the type of wood used) which shall be computed by a formula I would like included as part of my testimony. It is so complicated I doubt very seriously I could even explain it to the panel or subcommittee, but nonetheless, this is the kind of formula a businessman will have to understand to determine if the ladder he is using is safe.

I don't think we expect small businessmen to understand this kind of technical data. As a matter of fact, I took a look at some of the regulations and if we stack them one on top of the other, all of the OSHA regulations stand about 17 feet high, and I don't expect the small businessmen to be able to understand that either.

I suspect what we need is to provide some manner in which the small businessman can get advice and not be penalized for it after asking.

I am not criticizing the Labor Department's regulations. I think it is important that ladders be safe; that they not collapse when they are subjected to stress. I do not know of any way that this essential criterion for ladders can be stated in any simplier way. Safety is important, but it is complex. The small businessman does not need an exemption from the safety requirements—but what he does need and deserves is help in finding out what they mean, and help in understanding them.

The complexity, of the regulations, let me add, is not going to get less. Though much work can be done in simplifying existing standards and particularly in improving the indexing system, OSHA regulations are going to get more complicated, not less. That is inevitable because more and more the regulations will deal with occupational health questions which are, by their very nature, more complicated than safety questions. Thus, I think the problem of complexity will not go away—we must find ways to help the small businessman live with the complexity, not offer him the false hope that all that is needed is some better editors at the Department of Labor.

We must find ways to help the small businessman live with the regulations because, we cannot totally exempt him from the act. I can see no basis for suggesting that the employee in a small business is less deserving of protection than his fellow worker in a larger enterprise. If anything, the statistics suggest that the small firm offers more hazards than the large one to its employees. We cannot forego the duty to protect the employee but we must help the employer to provide that protection.

My bill provides that help to the small businessman without in any way prejudicing the rights of his employees. It provides that the Administrator of the Small Business Administration shall offer advice to any small businessman who requests it on how to come into compliance with the act and its regulations. This function is given to the SBA rather than to the Department of Labor to insure that this agency continues its primary role of inspection and by this division of function between the two agencies, we will preserve the Department of Labor's functions exactly as they are or we will merely add new authority to the SBA. That agency is already charged with assisting small businessmen in many ways; under the bill they will be given an explicit mandate to provide a chart through the maze of occupational safety and health regulations. What the small businessman needs and deserves is technical help in understanding OSHA's complex requirements—and that is what my bill provides.

[The formula referred to follows:]

$$S=\frac{3\,LD\,(P+W/16)}{12B(D^3-d^3)}=\frac{1.5\,LD\,(25+W/16)}{B(D^3-0.67)}$$

P=25 pounds, which is the normal component on each rail of a load of 200 pounds at the center of the ladder, equally distributed between the rails, when the foot of the ladder is moved out of the perpendicular by one-quarter of its length.

S=Stress in extreme fiber in pounds per square inch

W=Weight of ladder in pounds

L=Maximum working length of ladder in inches

D=Depth of side rail in inches

d=Diameter of hold board for rung (d^3 shall be taken as not less than 0.67).

Mr. Chairman, let me say my main concern is that we divide the responsibility of OSHA inspectors who are there to fine the small businessman if he finds some safety standard in violation.

And on the on-site consultation: I don't think any small businessman is going to contact OSHA and ask an inspector to come out if he feels that there is a violation. He will be heavily fined.

I don't think any candidate for reelection to Congress is going to contact an agency to find out if he is in compliance with the Federal election laws. If they find he is not, he is then fined or sent to prison. He is simply not going to risk that kind of a fine.

I would like to suggest the reason that my bill uses SBA as opposed to Department of Labor is to encourage the small businessman to seek consultation and help.

I think they would feel more comfortable if they went to SBA, an agency in the past that has assisted them in other matters as opposed to Department of Labor, an agency they may not feel as comfortable with or feel it might be as sympathetic to its cause.

The main thing is to get the small businessman to have a place to go, to get advice, and a place that they will feel comfortable with so they will seek that advice.

If they don't seek that advice, then they won't have any reason to try to be in compliance with OSHA rules and we really will have accomplished very little.

Mr. DANIELS. On behalf of the committee, I personally want to compliment you on a very fine statement.

I wholeheartedly agree with the reasoning you expressed as to why aid and assistance should be given to the small businessmen.

However, the bill I introduced on this subject varies from your bill in a couple of repsects, and I would like to have a little discussion with you as to these differences to see if we cannot come to some meeting of the mind on those issues.

I realize you are in a hurry to get away; you have an important appointment to get to, but I won't detain you very long.

Your bill limits on-site consultation to businessmen employing 25 or less employees; whereas, my bill is broader and more expansive. It extends it to all businessmen.

Would you have objection to extending it to give all businesses the opportunity for on-site consultation and advice?

Mr. LITTON. No; I would have no objection to that at all.

Mr. DANIELS. Now, also, a very important difference between the bill I have introduced, which again was cosponsored by others, and your bill, is that you would vest this authority for on-site consultation with the Small Business Administration; whereas, my bill leaves it in the Department of Labor which presently has jurisdiction.

True, the Small Business Administration, in my opinion, under the the law, may perform this service. They have that authority at the present time, but they have failed to use it.

I have consulted with the Department with an official of that Department, and personally they have shown no interest.

Now, I hesitate to give any agency of the Government authority to do something if they are not enthused about what they are going to do.

Therefore, if we give them this authority and they are not enthusiastic about it, even though we, as a Congress, have compelled them to do it, I hate to force anybody to do something they don't want to do because you won't get good results.

Under those circumstances, will you still adhere to your theory of vesting it in the SBA?

Mr. LITTON. My main concern is the people doing the on-site consultation are not the people doing the findings.

Mr. DANIELS. My bill separates them—separates enforcements from consultative services, and separates the appropriation for it as well.

Mr. LITTON. The main emphasis of my bill and your bill, we agree there. The secondary thing is, I would like to get the small businessmen to seek consultation, to really attempt to come into agreement with the OSHA rules.

Mr. DANIELS. That is the purpose of the legislation so we are going to accomplish that if this legislation passes the Congress, and is, hopefully, signed by the President.

Mr. LITTON. My only concern is whether or not the small businessmen, with a normal fear of the Department of Labor as being an enemy rather than friend, the normal inclination that the Small Business Administration has been, in the past, there to assist them, they would be more inclined to go to them for assistance than to the Department of Labor; and if they don't go to someone for assistance and consultation, then we have not accomplished very much.

I hate to think that an agency of our Government would not carry out their legislative responsibilities if we assigned them this job, and I would hate to think they would not do the job we gave them, so that we have to go around finding other agencies then that are willing to do the work that we as Congress think they should.

Mr. DANIELS. Jerry, in my opinion, SBA has the authority today, but failed to exercise it. We tried to encourage them but they have not accepted that responsibility.

Mr. ESCH. Will you yield for a second?

Mr. DANIELS. Yes.

Mr. ESCH. I notice we all have a time problem here, and I assume we may be dismissed for a short time, but a question I had, or another alternative approach I favor, is to give recognition that except in cases of iminent danger, the first citation would not be one in which you would impose a fine, but that you would give a reasonable time to the employer to correct the violation; and if he did not correct that violation within a reasonable time, then you would fine him. I recognize the constituency of Congress today, so obviously that legislation probably is not going anywhere in the present session.

We have already supported that type of legislation in the Youth Camp Safety bill; and, again, it places emphasis upon working with the employer to create a safe workplace, and yet still allows the Labor Department to come in and fine that employer if he is found in violation and does not comply.

Will you coment on that?

Mr. LITTON. Well, this, again, would help us go a lot farther than we are now.

One thing that concerns me, if the inspector came to your place of business and completed his inspection and determined you were in violation, not serious, but in violation, and gave you a year to comply.

Mr. ESCH. No, 30 days.

Mr. LITTON. Or 30 days or whatever, even though he didn't fine you, the fact he spotted the violation, he would be back in 30 days, 60 days, 1 year, 2 or 3 years, might still cause a small businessman not to seek the consultation because some businessmen in my district, the fines are far in excess of their net profits over a period of 2 or 3 years, and they would much rather risk never having been caught with a violation than to contact OSHA for an inspection.

Mr. ESCH. Well, the problem is today, two-thirds of those violations or citations which are contested are overturned and yet the small businessman today has no opportunity to seek redress other than to allow this, because in general he does not think he can afford that contested process.

What we are trying to do, I think, is reach the same end; that is, to provide or assure a safe workplace for every American worker and yet not be punitive upon especially the small businessman who needs the assistance to create a safe workplace.

Thank you, Mr. Chairman.

Mr. DANIELS. May I point out another difference between our respective bills: Your bill does not require a consultative officer to give a report to the employer as to the conditions he finds.

Either he is in compliance or not. If he is in compliance, he will ask him to make corrections within a certain period of time.

Do you support the idea that submitting a report to the employer would be improving this?

Mr. LITTON. I think it would. I agree to that, yes.

Mr. DANIELS. Which the employer may or may not use in the event he is subsequently cited for a violation.

Mr. LITTON. Yes.

Mr. DANIELS. I disagree with my distinguished colleague, Mr. Esch, on the first-instance sanction.

I think that the important part of OSHA is, it is absolutely impossible with the present staff of inspectors to inspect all of the workplaces in the United States. There are over 4 million of them. With its present working staff it would take about 100 years to inspect each and every place; so there has to be an incentive for employers to come within compliance of the act.

I think the first-instance violation is a very broad incentive.

I do believe that employers desire to obey the law. They want to be in compliance. Therefore, they do their utmost to do so even though an inspector may not visit them. The fact that an inspector may visit them may cause them to voluntarily request the consultative services and also to look into the law to see that they are in compliance.

I have nothing further to say, but do you want to add anything more?

Mr. LITTON. My main concern is, if I were a homeowner and wanted to see my home meet certain city fire regulations, I would like to be able to call an inspector to see if indeed it met the regulations; but I certainly would not do so if I thought the inspector that came to my home would find it was indeed in violation, and I was fined $3,000 for making the call.

Now, that kind of a situation is just not equitable and certainly does not help us reach our objective.

Neither would I want to call someone who I felt might be my enemy I would like to call someone I felt was sympathetic to me.

That is why I thought the SBA would be more sympathetic and we would get more calls and the more people who call and more businessmen who ask for consultation, the more corrections we make the safer the conditions in the country will be.

Thank you very much.

Mr. DANIELS. Thank you.

The next witness is the Honorable John Y. McCollister, distinguished Representative from the State of Nebraska.

STATEMENT OF HON. JOHN Y. McCOLLISTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. McCOLLISTER. Mr. Chairman, I would ask permission that my statement be made a part of the record and that I may be permitted to summarize what it says in the interest of saving time.

Mr. DANIELS. You may proceed exactly as you desire.

Mr. McCOLLISTER. Mr. Chairman, I don't pretend the same knowledge on this subject that the members of this subcommittee have, but I would say that I was the ranking member of the Small Business Subcommittee that had a considerable number of hearings on this question in the 93d Congress and as a former small businessman myself, I have been made acquainted with some of the provisions of OSHA.

Let me just say that I think the bill sponsored by the Chair and by Mr. Esch is a gigantic step forward in providing those consultation services.

I have just a couple of things that I would like to say about it.

First, in regard to the SBA, as a member of the Small Business Committee, I am extremely reluctant to give to the SBA any responsibility for this, not for the reasons already given here, because I don't want to dilute any further the ability of SBA to perform their primary mission.

I even introduced a bill to take away from SBA their disaster relief function that I think handicaps them greatly in doing that which the Congress intended that the SBA do.

In regard to separate consultative and inspection services, I would prefer, as I have remarked in earlier testimony before this subcommittee, that they be together. I see the good sense in separating them within the Department of Labor under the OSHA Administration if, in these first-instance violations, the request by the businessman for a consultation service can be evidence of his good faith effort to comply.

If we can do that, then I think the separation of the consultation services and the inspection services would work very well.

Mr. DANIELS. On that point will you yield?

Mr. McCOLLISTER. Yes.

Mr. DANIELS. We go a step further. An employer asks for consultative services and the consultant finds a serious danger, not an imminent danger, but a serious danger, and the inspector grants a certain timetable for the elimination of that violation, say 2 weeks.

Mr. McCOLLISTER. Right.

Mr. DANIELS. He returns at the end of 2 weeks and the violation is not cured; what do you think should be the next step?

Mr. McCollister. The next step is, and we will assume, of course, it can be fixed within 2 weeks.

Mr. Daniels. Assuming that is a reasonable time limit.

Mr. McCollister. That he should no longer have any protection, he should be fined, he should have the full force of the law on the penalties prescribed for it.

Mr. Daniels. In other words, it is your thought that the Secretary then would have authority to issue citations?

Mr. McCollister. Yes.

Mr. Daniels. And so cite him for a fine?

Mr. McCollister. Yes, sir.

Mr. Daniels. I think that is a very important issue and it has not been too clear in some of the testimony that has been given. There is some confusion on that issue.

I would like my colleagues to understand that particular situation, because it is a very important incident which I am sure will develop as time goes on. We should anticipate that.

Mr. McCollister. The big difficulty with OSHA is its complexity and people understanding what is required of them.

That is what I want to fix and which I believe your bill does better than any that have come along, if we can provide for some evidence of a good-faith effort when he has requested a consultation, showing his intentions to build a safe workplace.

Mr. Esch. Mr. Chairman, if you will yield for a second —

Mr. Daniels. May I ask one further thing.

I believe that where an employer asks for consultation, is given a report, and does what he has been instructed to do by the consultative office, then the certificate given to him by the consultative officer should be some evidence of good faith to be taken into consideration in mitigation of any penalty that might be imposed by the Secretary. That is my view.

Mr. Esch. Mr. Chairman, I wanted to commend you because I think it would go a long way in clarifying for that businessman out there and also would go a long way toward encouraging the small businessman to work cooperatively with the Labor Department to correct these faults immediately; and I also want to go on record in agreeing with our witness, and you, that there is no question, if he is not correct, and he does not show good faith and given the fact there needs to be a reasonable time given to correct these, but if he doesn't, the full sanction of the law should be applied.

Mr. Daniels. I am pleased we are all in accord here this morning, and I think this is going to go a long way in helping to enact this bill.

Mr. McCollister. There are a lot of other things I could say about the bill in complimentary tones, but our time is short.

Mr. Esch. If you will yield, Mr. Chairman, I want to compliment this gentleman on his work in the other committee and recognizing the jurisdiction of this committee. I think he has been careful, with a membership of that other committee, in showing leadership for the small businessman, but at the same time working with this committee.

Mr. Daniels. I want to congratulate him again, and he has been here before, and expressed views which impressed this committee and other members of the full committee which caused so many of my colleagues to cosponsor the legislation we have today.

Mr. McCOLLISTER. I am grateful for this flattery, but we are going to miss that quorum call.

Mr. DANIELS. The committee will recess in response to a quorum call and we will get back as promptly as possible, possibly about 10 minutes.

[Recessed at 10:10 a.m.]

[The prepared statement of Mr. McCollister follows:]

PREPARED STATEMENT OF HON. JOHN Y. McCOLLISTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, I appreciate this opportunity to appear again before this subcommittee to urge your approval of legislation to provide free, voluntary, on-site consultation services under the Occupational Safety and Health Act. I urge you to approve H.R. 8618, which I have co-sponsored, with only minor changes.

OSHA has become a code word among businessmen for arbitrary government harassment. This need not be the case. I am convinced that businessmen realize their stake in job safety and healthy working conditions. What they also realize, unfortunately, is that the OSHA regulations are so very complex and difficult to interpret, that they stand a good chance of being found in violation of some obscure safety or health standard despite their best intentions or sizeable outlays to achieve the goals of the OSHA program.

Adoption of a voluntary on-site consultation program would go a long way towards removing the uncertainties of the OSHA program which have frightened many small businessmen and hampered voluntary compliance with the law.

After reviewing the many suggestions for reform, I have co-sponsored two bills to provide on-site consultations. Each has provisions which I feel your subcommittee should incorporate into your final bill.

It is imperative that the consultation services provided be free to those using the service. This would encourage businessmen to use the service and thus hasten their compliance. It would also address the principal need for the service, since many smaller businesses cannot afford to keep a full-time safety expert on the payroll or bring in outside consultants.

A constructive improvement incorporated in Chairman Daniels' bill, H.R. 8618, is removal of the requirement that consultations be available only to employers of 25 or fewer persons. There is strong justification for directing consultative services to the small business community. That is where the need is. Any bill should direct preference and priority for small business consultations. But many small firms employ more than 25 persons when the office clerical staff is included. Some firms with up to 100 employees face the same under-capitalized, short-staffed situations which make OSHA such a burden on the very small businesses. Allowing consultants some leeway in extending consultation services to these employers will strengthen the program.

I would not argue that the penalty provisions in the Act are not effective in encouraging compliance among those who understand their responsibilities under the Act. It would seem helpful, however, to allow OSHA inspectors some leeway in assessing sanctions against first-instance violators to account for any good faith efforts which the employer may have made to satisfy the regulation in question. In this regard, the Findley bill, which I am also co-sponsoring, would seem the superior approach in that it would allow first-instance violators to be dealt using a flexible, discretionary approach that would eliminate a great deal of the fear and trepidation which now accompanies an OSHA inspection.

In my earlier testimony, I suggested that there are inherent efficiencies in having OSHA inspectors also provide consultation services. I reasoned that this would assure the businessman that the advice he was getting would be completely in tune with the inspection requirement he would be expected to comply with. It would also allow the subsequent inspection to be directed towards those hazards identified during a consultation.

Mr. Daniels' bill would have the Department of Labor provide separate inspection and consultation services under OSHA. I still believe my earlier argument to be sound. Separate inspection and consultation personnel might work out, however, if combined under one policy-making coordinator within OSHA and if "good faith" could be incorporated into the procedures for assessing penalties. It is absolutely essential that businessmen be assured that the advice which they receive from OSHA consultants be identical to the standards which will be required by OSHA inspectors. It seems to me that consideration of good faith attempts to comply with the recommendations of an OSHA consultant should be taken into consideration at the time of a subsequent inspection.

Finally, I would hope the committee would act favorably on that provision in H.R. 8618 which leaves it up to the individual businessman whether to show the OSHA consultant's report to the inspector. it would be more efficient to require divulgence of this information, but in the interests of encouraging businessmen to take advantage of the consultation program, I think the Chairman is correct in including this provision.

In closing, let me reaffirm my strong belief that enactment of a consultation program in OSHA will speed compliance with the Act and hasten the benefits which will be derived from safer and healthier workingplaces for all Americans.

I commend this Subcommittee for its energy in developing this legislation and hope that the full House will soon have an opportunity to pass this badly needed reform of the Occupational Safety and Health Act.

Thank you.

Mr. DANIELS. Our next witness is Mr. Randolph M. Hale, assistant vice president and manager, Industrial Relations Department of the National Association of Manufacturers.

Mr. HALE. Yes, Mr. Chairman.

Mr. DANIELS. Mr. Hale, you may submit your statement for the record or you may read it, if you so desire.

Mr. HALE. Thank you, Mr. Chairman.

I have a short statement.

What I would like to do is skip about half of it.

Mr. DANIELS. All right, I will make a motion for unanimous consent that your statement be incorporated in the record at this point.

Are there any objections?

Hearing none, it is so ordered.

Mr. HALE. Thank you.

[The prepared statement referred to follows:]

PREPARED STATEMENT OF RANDOLPH M. HALE, ASSISTANT VICE PRESIDENT AND MANAGER, INDUSTRIAL RELATIONS DEPARTMENT, NATIONAL ASSOCIATION OF MANUFACTURERS

My name is Randolph M. Hale and I am Assistant Vice President and Manager, Industrial Relations, National Association of Manufacturers, Washington, D.C.

This legislation is of particular interest to the National Association of Manufacturers as 88% of our 13,000 members have fewer than 500 employees and, in fact, 55% employ less than 100 employees. It is precisely these size companies that have been the most adversely affected, perplexed and confused by the Occupational Safety and Health Act of 1970.

We commend the distinguished Chairman and the ranking minority members of this Subcommittee for their efforts in introducing this legislation (H.R. 8618) to amend OSHA so that employers can obtain assistance in meeting OSHA requirements. The NAM wholeheartedly endorses this effort, and we offer our aid and assistance in order to achieve a successful on-site consultation program for employers.

I would first like to offer some general observations as to how we view the concept of on-site consultation, and will then specifically address the provisions of H.R. 8618, Chairman Daniels' on-site consultation and education amendment.

As indicated, the NAM has generally supported efforts to implement on-site consultation. This has been true ever since it became obvious that employers, particularly small employers, needed some outside assistance in meeting OSHA standards' requirements. In testimony delivered before this Subcommittee on June 25 of last year, we listed on-site consultation as one of the major reforms necessary in order that OSHA achieve the results which Congress had envisioned.

We remain adamant in our belief that on-site consultation will be a successful program if, and only if, employers are encouraged to use the program without fear that OSHA compliance personnel can become easily involved. As long as the fear exists among employers that on-site consultation may be nothing more than a disguised enforcement mechanism, the program will never operate successfully.

For this reason we withdrew our support from the OSHA program published on May 20. A careful analysis revealed that this particular OSHA program would have permitted consultants to involve OSHA enforcement personnel at their whim. A letter detailing our objections to the OSHA program is attached to this statement as Appendix I as well as OSHA's reply to our letter (Appendix II).

In light of the above comments, I'd like to turn now to H.R. 8618. Having carefully examined its provisions, the National Association of Manufacturers believes it to be constructive and significant contribution to achieving safe and healthful working conditions if implemented properly. Therefore the NAM supports in general H.R. 8618.

The following specific points in the bill we endorse:

(1) The program is to be placed and administered within the Department of Labor. This feature has two obvious advantages. It puts on-site consultation into the agency where the expertise already exists, and it precludes the creation or the expansion of another agency and all the resultant additional costs that usually attend such an action.

(2) Although the program gives priority to small businesses and hazardous workplaces, it does not set an arbitrary number of employees cutoff limit at which point the service would not be available. Thus OSHA is allowed the necessary discretion to evaluate any legitimate on-site consultation request, regardless of the employer's size.

(3) Because this program would be set up under an amendment to the Act, it would be available in every State which is not operating under an OSHA approved state plan. As a matter of fact, a strong argument can be made that on-site consultation will have to be made available in every State because of the "as effective as" requirements of section 18 of the Act. In other words, state plans not offering on-site consultation could not be "as effective as" the federal program.

(4) The 100% federal funding for on-site consultation assures that every eligible state will use the service. The state economic problems which have had an adverse effect upon the OSHA-approved state plans will not affect the program.

(5) The program provides that upon a subsequent enforcement inspection, the Secretary may, with the employer's consent, consider the consultant's report for the purpose of determining good faith in proposing penalties. This mitigation factor is important in encouraging employers to use the service. Conversely, we believe it should be made exceedingly clear that a consultant's report cannot be used in any subsequent enforcement proceeding under the Act, except where the employer has consented to the consideration of the report.

We do have some reservations about the program as proposed and I'd like to state these for the record:

(1) The consultant's report is not binding upon enforcement personnel in the event of a subsequent compliance inspection. Therefore, the employer who utilizes on-site consultation really has no guarantee that he has complied with OSHA's standards' requirements. Since this is the case, it is absolutely imperative that the consultant's report not be used *against* the employer, unless for some reason the employer agrees to its use. Otherwise, it would probably be better for the employer to take his chances on a compliance inspection rather than to avail himself of on-site consultation.

(2) Compliance personnel can still be potentially involved upon the discovery of a serious hazard where the employer for some reason refuses to cooperate in abating the hazard. We would prefer the potential involvement of enforcement personnel be limited to situations of imminent danger where the health and lives of employees are in jeopardy and the employer refuses to correct the situation. As drafted, we believe that some employers will be discouraged from using the service because it may lead to an OSHA enforcement inspection. Hopefully, this may prove to be an unwarranted fear as a successful on-site consultation program develops.

Again, I'd like to commend the distinguished Chairman and the ranking minority member for introducing this important legislation. We offer our support and cooperation in making this program a success to aid employers in meeting OSHA requirements.

I thank you for this opportunity to testify on behalf of the NAM and I would be pleased to answer any questions which you may have.

Appendix I

National Association of Manufacturers,

June 4, 1975.

Hon. John H. Stender,
Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, D.C.

Dear Mr. Stender: As you know, the National Association of Manufacturers has actively supported the concept of on-site consultation for employers to aid in meeting OSHA compliance requirements. When Representative William Steiger of Wisconsin introduced his amendment to the FY 1975 Labor-HEW appropriations bill last year to grant $5 million to the States to provide for on-site consultation, the NAM strongly supported this action.

The NAM, continuing its support, submitted rather extensive comments on the implementing rules when they were proposed by OSHA on January 15, 1975. We reiterated our belief that an effective on-site consultation program could do much to alleviate the atmosphere of fear and distrust which many employers continue to hold out for OSHA, notwithstanding the fact that an employer who utilizes the service would not be protected by the consultant's advice in the event of a subsequent compliance inspection.

Now, however, having carefully read and examined the final implementing rules which were published in the FEDERAL REGISTER on May 20, 1975, we are immediately withdrawing our support for this program.

Our reasons for this withdrawal of support are plain and simple. The final regulations have adulterated the intended purpose of the on-site consultation program by substantially amending a key definition, by going contrary to the program's legislative history, and finally by ignoring an existing OSHA Program Directive. Whereas in the proposed rules, enforcement personnel could have become involved only in situations pertaining to imminent danger, it now appears that "consultants" can, at their discretion, involve enforcement personnel anytime something less than an alleged serious violation is discovered. Based on the wide disparity which has been shown in the past by OSHA compliance personnel in citing alleged serious violations, history forces us to conclude that this on-site consultation program will be nothing more than a masquerade for enforcement.

The reasons given by OSHA for amending the final rules [§ 1908.5(c)(7)] to change the words "imminent danger" to "hazards which could reasonably be expected to cause death or serious physical harm" are not persuasive. Imminent danger situations, by clear definition, are based on the element of immediacy. The Act itself explicitly separates "imminent danger" situations from other types of hazards and provides an enforcement mechanism whereby immediate relief through the U.S. Courts can be obtained.

Under the final published rules for on-site consultation, a consultant is to seek immediate elimination of a discovered hazard anytime he believes it could *reasonably be expected* to cause death or serious physical harm. Failure of the employer to cooperate in the immediate elimination of the hazard or removal of affected employees from the area results in an OSHA enforcement action against him. The key element in an imminent danger situation, its "immediacy", has been deleted from the language of the regulation.

The severe impact of this omission is illustrated by examining a serious violation as defined in section 17 of the Occupational Safety & Health Act. A serious violation is deemed to exist if there is a *substantial probability* that death or serious physical harm could result. Thus, under the on-site program, the employer is under a stricter duty to comply with OSHA requirements, than he is under the serious violation enforcement provisions of the Act. Furthermore, under the on-site regulations, the consultant may request the *immediate* elimination of the alleged violation, and where that isn't possible, the removal of affected employees from the area. Yet under the serious violation enforcement provisions of the Act the compliance officer is given no such authority. In fact, the employer must be notified of the alleged violation in writing and be given an opportunity of 15 working days in which to contest the citation.

Our point is further illustrated by turning to the legislative history of the Steiger amendment. In addressing the House on June 26, 1974, Representative Steiger stated:

"In the event of an *imminent danger* situation, the consultant must request immediate abatement. If the employer refuses to abate, the consultant must advise OSHA of the situation . . .

"OSHA would carefully *monitor* the program to insure the reliability and competence of the consultation services. In addition, special attention would be given to determine whether hazards, *particularly serious hazards*, discovered during a consultation visit remained unabated despite the consultant's advice."

It is exceedingly clear that Representative Steiger wanted to maintain a visible distinction between alleged serious hazards and imminent danger situations, such distinction being maintained by the notification or lack of notification by the consultant to OSHA enforcement personnel.

Finally, and perhaps most telling, is OSHA Program Directive #74-13. This Directive revised Program Directive #72-27, which set out guidelines for State 18(b) consultation programs. Quoting from the revised Directive:

"Employers faced with the possibility of eventual enforcement action may prefer not to avail themselves of the voluntary compliance opportunity provided by a State's on-site consultation service. Therefore, to increase the incentive for employers to request State assistance in voluntarily complying with standards and to allow the various States to offer a true consultation service, the requirement that serious violations found during on-site consultation be subject to subsequent compliance action is hereby modified. States offering such consultation services may, but need not, take enforcement action when a serious violation is identified during an on-site visit."

The Directive indicates clearly that OSHA has not made the same commitment to success under its own consultation program.

This brings us to the ultimate failure of the on-site consultation regulation. Regrettably, somewhere along the line the needs of the small employer and his employees, the ones who should stand to benefit the most from this regulation, have been overlooked. Whereas these employers could have had an opportunity to seek on-site consultation aid without undue fear of recriminations, they are now in reality not much better off than they would be under an OSHA compliance inspection. Indeed, this regulation makes it inadvisable for many small employers to seek OSHA consultation services.

We must conclude that in its present form this program for on-site consultation will not serve to benefit those small employers for whom it was intended. We shall so advise our membership.

Yours truly,

RANDOLPH M. HALE.

U.S. DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., June 23, 1975.

Mr. RANDOLPH M. HALE,
Assistant Vice President-Manager,
National Association of Manufacturers,
Washington, D.C.

DEAR MR. HALE: Thank you for your letter of June 4, 1975, in which you discuss the National Association of Manufacturer's viewpoint concerning 7(c)(1) consultation. I am disappointed to hear that the NAM is withdrawing its support of this program.

Certainly a major problem in designing this program was how to handle situations involving either imminent danger or discovery of serious hazards by the consultant in the workplace. It was our final contention that program funds expended under safety and health legislation should not be used to provide personnel who would be asked essentially to ignore a situation where, in their opinion, death or serious harm could reasonably be expected to occur.

There is no intent to instantly involve enforcement personnel. The consultant is required to point out the serious hazard and request elimination. There is a follow-up visit by a consultant, not a compliance officer, to see if the problem has been eliminated. It is only after these consultative efforts that continued inaction by the employer will result in contact with OSHA enforcement personnel.

It does not seem reasonable to us to expect any professional in the safety and health field who has noticed a hazard which he believes could reasonably be expected to cause death or serious physical harm to take no action if nothing is done: to essentially wash his hands of the whole affair and move on to the next workplace. We believe we must go beyond philosophical discussions of the meaning of consultation and focus on the real world of employee danger. The probability of death or serious physical harm to individual employees is not a philosophical concept. It cannot be ignored.

We do not believe this issue will arise often during consultation. The employer who seeks consultation has already identified himself as someone interested in workplace safety, and is not likely to ignore the advice of a professional he has called upon when that professional warns him of a serious hazard.

To the extent these new regulations conflict with previous directives regarding consultation, it is our intention to modify the previous directives.

We have appreciated the assistance and contributions of the NAM in the past, and appreciate your comments on our consultation program even though we find ourselves in disagreement. We will monitor the operation of this program carefully. Should we find problems in this area of concern, we will modify our program appropriately.

Sincerely,

JOHN H. STENDER,
Assistant Secretary of Labor.

Mr. DANIELS. I would recommend that you read that part of your statement which endorses my bill, first.

Mr. HALE. That, sir, is most of the statement.

STATEMENT OF RANDOLPH M. HALE, ASSISTANT VICE PRESIDENT AND MANAGER, INDUSTRIAL RELATIONS DEPARTMENT, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. HALE. We would like to commend you and other members of the subcommittee for their efforts in introducing this legislation.

We do support it and we think it can be constructive program.

Let me give some history of why we withdrew our support from OSHA's program and then most of our statement we mention four or five points in your bill that we like.

I would like to concentrate on those.

The first point is the program has to be placed and administered within the Department of Labor. This feature has two obvious advantages. It puts on-site consultation in the agency where the expertise already exists and precludes the creation or expansion of another agency and all the resultant additional costs that usually attend such an action.

Two. Although the program gives priority to small businesses and hazardous workplaces, it does not set an arbitrary number of employees cutoff limit at which point the service would not be available. Thus OSHA is allowed the necessary discretion to evaluate any legitimate on-site request, regardless of the employer's size.

Three: Because this program would be set up under an amendment to the act, it would be available in every State which is not operating under an OSHA approved State plan. As a matter of fact, a strong argument can be made that on-site consultation will have to be made available in every State because of the "as effective as" requirements of section 18 of the act. In other words, State plans not offering on-site consultation could not be as effective as the Federal program.

Four: The 100 percent Federal funding for on-site consultation assures that every eligible State will use the service. The State economic problems which have had an adverse effect upon the OSHA-approved State plans will not affect this program.

Five: The program provides that upon a subsequent enforcement inspection, the Secretary may, with the employer's consent, consider the consultant's report for the purpose of determining good faith in proposing penalties. This mitigation factor is important in encouraging employers to use the service. Conversely, we believe it should be made exceedingly clear that a consultant's report cannot be used in any subsequent enforcement proceeding under the act, except where the employer has consented to the consideration of the report.

We do have some reservations about the program as proposed and I'd like to state these for the record:

One: The consultant's report is not binding upon enforcement personnel in the event of a subsequent compliance inspection. Therefore, the employer who utilizes on-site consultation really has no guarantee that he has complied with OSHA's standards' requirements. Since this is the case, it is absolutely imperative that the consultant's report not be used against the employer, unless for some reason the employer agrees to its use. Otherwise, it would probably be better for the employer to take his chances on a compliance inspection rather than to avail himself of on-site consultation.

Two: Compliance personnel can still be potentially involved upon the discovery of a serious hazard where the employer for some reason refuses to cooperate in abating the hazard. We would prefer the potential involvement of enforcement personnel be limited to situations of imminent danger where the health and lives of employees are in jeopardy and the employer refuses to correct the situation. As drafted, we believe that some employers will be discouraged from using the service because it may lead to an OSHA enforcement inspection. Hopefully, this may prove to be an unwarranted fear as a successful on-site consultation program develops.

Perhaps an alternative to that would be language similar to what was in OSHA's program directive 7413, which concerns State on-site consultation. Their phrase was "Requirement that serious violations found during on-site consultation be subject to subsequent compliance action is hereby modified. States offering such consultation services may, but need not, take enforcement action when a serious violation is identified during an on-site visit."

Again, I would like to commend the distinguished Chairman and ranking minority Member of the committee and other members for this legislation because we think it offers a constructive approach to the numerous problems created by OSHA. Thank you.

Mr. DANIELS. Mr. Hale, on behalf of the committee and myself personally, I want to compliment you for your statement and also for the very clear and lucid reasons as to why you support H.R. 8618.

Now, as to the two objections you propose, possibly we can buy one of them. I don't know whether or not we can buy the other, but if we only meet you halfway, you can still support the bill.

Mr. HALE. I think we are in there.

Mr. DANIELS. As to your second objection, I can go along with the first objection you raise, and your thinking there is in line with mine, but as to your second objection, counsel points out to me where there is a serious violation and there is a report given, the employer may or may not want to utilize the report or furnish it to the Secretary in mitigation of the offense.

However, this law says, and I will quote, "Where the Secretary is not satisfied, through a further consultative visit, documentary evidence, or otherwise, that such limitation has taken place, the Secretary may take any appropriate action under this act."

The important word there is "may" and we give the Secretary wide latitude and discretion here as to what course of action he would take in the future.

Mr. **Hale**. I would hope, I hoped that would be covered in the committee report.

Mr. **Daniels**. Mr. Beard, any questions of the witness?

Mr. **Beard**. No questions, Mr. Chairman.

Mr. **Daniels**. Again, thank you very much for your support. That concludes today's hearings and the committee will adjourn and reconvene tomorrow morning at 9:30 a.m., in room 2175, the main committee room.

[Whereupon, at 11:30 a.m., the subcommittee adjourned, to reconvene on Thursday, July 24, 1975.]

ON-SITE CONSULTATION HEARINGS, OCCUPATIONAL SAFETY AND HEALTH ACT

THURSDAY, JULY 24, 1975

House of Representatives,
Subcommittee on Manpower,
Compensation, and Health and Safety
of the Committee on Education and Labor,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2175, Rayburn House Office Building, Hon. Dominick V. Daniels, chairman, presiding.

Members present: Representatives Daniels, Gaydos and Sarasin.

Staff present: Daniel H. Krivit, counsel; Denniese Medlin, clerk; Sue Nelson, legislative associate; and Richard Mosse, minority assistant counsel.

Mr. Daniels. The Subcommittee on Manpower, Compensation, and Health and Safety will come to order.

Our first witness this morning is the Honorable William A. Steiger, Representative of the State of Wisconsin, a very able and capable former member of the Committee on Education and Labor, who contributed much to the work produced by this committee.

I know he has a deep interest in the subject matter of the legislation before us, so I extend to you, Bill, a cordial welcome.

STATEMENT OF HON. WILLIAM A. STEIGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Steiger. Thank you very much, Mr. Chairman, for your welcome and your comments and for the chance to testify this morning.

I will be very brief. I have a statement which I would ask to be made a part of the record.

Mr. Daniels. Any objection to the incorporation of Congressman Steiger's statement in full in the record?

Hearing none, it will be so ordered.

[Prepared statement of Congressman Steiger follows:]

Prepared Statement of Hon. William A. Steiger, a Representative in Congress From the State of Wisconsin

Mr. Chairman, I find myself in a peculiar position this morning. Actually, it is a reversed position. For eight years, I sat with the distinguished members of the Daniels' Labor Subcommittee, now I appear as a witness. I am grateful for this chance to discuss the Chairman's bill, H.R. 8618, which I am pleased to have joined as a co-sponsor. Lately, I have spent many mornings at eight o'clock hearings which are necessitated by the Ways and Means Committee schedule. It is a relief to find a Subcommittee with a more reasonable schedule.

The purpose of this hearing is to review a proposal which I have supported for the past several years. That is, an on-site consultation program by the Federal government to assist employers in complying with the Occupational Safety and Health Act. It would be useful to describe how this legislation came into being.

The original Occupational Safety and Health Act incorporated the principle of first-instance citations as the means to ensure voluntary compliance with the Act by employers. It is, in a sense, a disincentive for it is one based on knowledge. There is a fear of Federal inspections, citations and heavy fines in the present circumstance which in large part stems from a lack of knowledge on the part of many employers and employees.

This procedure has created a perceived imbalance between the dual goals of enforcement and education. The intent was not to harass the employer and incur his hostility. Rather, we are seeking, through education and cooperation, to improve the health and safety conditions of the workplace.

The Act did provide for off-site consultation for employers. However, such assistance was, and remains inadequate, especially for the small employer and for those who have specific questions on the application of a complex standard in the workplace.

This problem was thoroughly explored three years ago by the able gentleman from Missouri, Mr. Hungate. The hearings conducted by his Small Business Subcommittee were followed that year with hearings by this Subcommittee. The result of those oversight activities was legislation to bring education about workplace safety and health hazards in balance with enforcement activities. The means was an on-site consultation program for employers sponsored by Chairman Daniels and myself.

Despite bi-partisan support and endorsement by business and labor organizations, the legislation was not enacted in 1972. The Committee Report on that legislation, which was never reported to the House of Representatives, clearly stated the need for the program. It stated, "the Occupational Safety and Health Act requires much of employers that has never been required of them before * * * these requirements are essentially reasonable and will inure to the long run benefit of employers as well as employees. One aspect has caused legitimate concern * * * the Act's prohibition on consultation visits to an employer's workplace."

Midway through the 93d Congress, we found ourselves with a needed and workable concept, but our consensus on how to operationalize this concept had evaporated. Congress has been accused of hearing legislation to death, and the on-site consultation program seemed doomed to such a fate.

To prevent such an occurrence, I sought to revive the program through an admittedly circuitous route. As with the original legislation, this approach did not receive unanimous support by the Subcommittee, nor business and labor. Everyone voices support for the concept until they see the actual legislation. I have been fascinated by the fluctuation in positions as we have sought to develop a consultation program.

My proposal was to amend the Labor-HEW Appropriations bill to provide funds to the States for a State consultation program under authority provided by Section 7(c)(1) of the Act. This program is currently underway. This year, the Administration included funding for the consultation program in its budget request for the Department of Labor.

There was a significant departure from the original consultation bill in that assistance would be available to all employers. A priority basis for consultation was included in the program, with small business receiving first consideration.

There remain problems with a State and not a Federal consultation program. Some have argued that the Federal government should offer consultation as well as inspection to complete its program. This was brought out during the debate on the Labor-HEW Appropriations bill. Chairman Daniels indicated during the debate that the Subcommittee would promptly review legislation to permit Federal consultation.

Mr. Daniels went one step further, and introduced legislation, H.R. 8618, which I have co-sponsored and strongly support.

We have traveled far in the development of this legislation. It would be useful to compare where we are now with what we had back in 1972. My original bill amended Section 28 of the Occupational Safety and Health Act. That Section was designed to provide economic assistance to small employers. Federal consultants would have been authorized to make worksite visits for the purpose of advising small employers as to their obligations under the Act. Such visits were to have been made at the request of the employer and limited to the problems described in the request. The consultant would have been prohibited from issuing a citation or proposing a penalty. However, a consultation visit would not have precluded the issuance of a citation during a subsequent inspection. I have noted that several witnesses have criticized this aspect because it would seem to diminish the value of the consultation. I disagree with this position and would refer to the colloquy which I had with Congressman Findley on this very point last year during the Labor-HEW Appropriations debate. I would like to submit this discussion for the record. I might also add that though consultants maintain their independence from inspectors, both receive the same training. We must also recognize the fact that even as the perception of a violation may vary between consultants and inspectors, it may also vary between inspectors who visit the same workplace.

One of the more controversial sections of the legislation was the procedure to be followed in situations of "imminent danger". I feel that the approach of the original legislation and the current bill is the correct one. It continues to be a matter of dispute.

On the whole, the original legislation was intended as a compliment to the inspection program. It completed the principle of enforcement and education.

H.R. 8618 maintains and extends this principle. The bill amends Section 21 to provide consultation to all employers. This is in keeping with the legislative developments with this program of the past year. Small employers and hazardous industries would receive priority consideration.

Another significant departure from earlier legislation is the "imminent danger" situation. The consultant would be required to bring the matter to the attention of the Area Regional Director who would follow the procedures of Section 13 of the Act. In addition, if a condition is recognized which has substantial probability that death or serious physical harm to employees could result, the employer would be required to abate such conditions. Legitimate questions have been raised about the definition of "substantial probability" and the abatement procedure. I would hope that the Subcommittee will clarify both questions in its report on this legislation.

I would like to return to the matter of the consultant's advice. The advice, in the form of a report, would not be transmitted to the enforcement branch. It could be used by the employer to demonstrate good faith in complying with the program. While the consultant is to direct his comments to the employer's requested problems, he would point out any hazards he would observe. I would suggest that the consultant be required to inform the employer that his advice is not comprehensive nor binding on an inspector. This is the procedure now followed under the State consultation program.

The bill also provides for a training and education program in local communities. The Subcommittee should clarify the intent of this section also. Such a program would complete the objective of educating the employer in order that he might voluntarily comply with the program.

I would also like to respond to a problem raised by Mr. Findley. To relieve the burden of the Act on small employers, he has proposed language in his bill which would eliminate first-instance citations. I disagree that this is the problem facing small employers. The average citation per inspection is $100 which does not strike me as an onerous burden. The actual problem is one of understanding standards, and providing the employer with lucid explanations should be the focus of our attention.

In closing, I would like to comment on the future of the State consultation program. Obviously, there would be a duplication of effort in those States without state plans who have opted for a consultation program under existing legislation. Since I hope that H.R. 8618 will be enacted into law this year, I would suggest that provision be made to phase out the State consultation program after June 1976. A mechanism for absorbing State consultants into the Federal program would be appropriate.

I would urge the Subcommittee to act swiftly on H.R. 8618. There are currently 18,500 annual requests for consultation in the 20 states now offering such advice. The demand exists, and we must act to provide the service.

It has been a pleasure joining you this morning.

Mr. STEIGER. Thank you, Mr. Chairman.

Obviously, the subject of the Occupational Safety and Health Act and particularly how we deal with the question of consultation is one that you, Mr. Chairman, and the members of the subcommittee, which you have the honor to chair and on which I had the honor to serve for 8 years, is not a new subject and one that continues to be important.

I think the chairman's bill, H.R. 8618, which I am pleased to join as a cosponsor, is an excellent bill and deserves to be passed. I hope it will be promptly approved by the subcommittee and dealt with by the full committee and that the full House will quickly pass it.

In the early part of my prepared statement, I talk about the history that you are more familiar with than most, as to how this thing began, where we went, and why.

I want thus to talk directly to some of the problems. I will read directly from the statement for the reporter's benefit at this point.

H.R. 8618 maintains and extends the concept of what we tried to do with enforcement and education.

To amend section 21 is rational, and it is in keeping with the legislative developments of this program for the past year.

The small employers in hazardous industries would receive priority consideration.

There is, however, in the bill one significant departure from the earlier Daniels-Steiger bill regarding imminent dangers. The consultant would be required to bring the matter to the attention of the regional director who would follow procedures of section 13 of the act.

In addition, if a condition is recognized which has a substantial probability of death, or if serious physical harm to employees could result, the employer would be required to abate such a condition.

Legitimate questions have been raised about the definition of "substantial probability" and the abatement procedure. I hope the subcommittee will clarify both of these questions in the report on the legislation.

You are familiar, Mr. Chairman, with regulations which the Department of Labor issued under the $5 million consultation contract provision in the relevant appropriations legislation.

The National Association of Manufacturers, among others, has taken issue with this concept of substantial probability, I think, in error.

Because I think the Department correctly analyzed this gray area as one in which the difference between imminent danger, for which there is an immediate abatement process, and a serious danger in which a substantial probability exists for death or physical harm, the difference is one of timing only and to ignore the problem of a serious violation will give us this situation.

Mr. DANIELS. Will the gentleman yield?

Mr. STEIGER. Yes.

Mr. DANIELS. The National Association of Manufacturers had their representative here yesterday, and testified and they modified their position on that point.

Mr. STEIGER. Oh, I am delighted to know that. Thank you very much.

I will have to take a look at their statement. I am a day behind, and I have not seen that, but I am glad they have.

But I want to make sure the members of this subcommittee recognize that I think the Department in its regulations did attempt very well to deal with that issue, because it really is a matter of substance.

Mr. DANIELS. While on that subject, I have a question for you: When a consultant visits a business establishment and discovers a serious danger, gives the businessman a reasonable time for abatement and then discovers after that abatement period that the situation has not been eliminated, how do you think the law should deal with this situation?

Mr. STEIGER. Well, if, Mr. Chairman, it is a situation in which, in the consultant's view, there is a substantial probability of death or serious physical harm, I assume, under the way the bill is drafted, the consultant would, at the time of his initial consultation visit, point it out, ask that it be abated, provide a specific period of time for abatement, and then either personally, or by some other method, verify whether or not abatement had in fact taken place.

If it has not taken place, if no effort had been made by the employer to abate that serious condition, it would seem to me that the consultant would, in that limited circumstance, be justified in calling that to the attention of the compliance officer.

I can see another problem which arises and which I understand the Chamber of Commerce raised, upon what happens if the employer can't make the deadline. He does try, however. I think in that situation, it seems to me that the consultant is justified, if there is a strike, if there is material not available, if any one of a number of things arises to hamper the employer who in good faith tries to deal with the problem pointed out to him by the consultant, that the consultant can legitimately extend the time for abatement of the serious danger problem.

Does that respond to the question you asked?

Mr. DANIELS. Yes. Thank you.

Mr. STEIGER. One other point that I would like to try to make, because John Anderson raises it in his testimony to follow me, and I will point to page 5 of my statement, if I may.

Obviously, there would be a duplication of effort in those States without State plans who have opted for a consultation program under existing legislation.

Since I hope H.R. 8681 will be enacted into law this year, I suggest that provision be made to phase out the present consultation program after June 1976 and to offer a mechanism for absorbing State consultants into the Federal program.

You will note that John Anderson raises that same issue and suggests perhaps we go to something like 80–20.

Mr. DANIELS. Maybe our minds are all working in the same direction.

In my notes here, I proposed to ask the same question of the Department representatives who will appear here this morning as to what their plan is on that subject.

We have 22 States that have State plans, one of which has already indicated, Utah, that it is not interested in on-site consultation.

One State does not have a plan as indicated, but intends to institute an on-site consultation. But, we have 34 other jurisdictions without State plans.

Mr. STEIGER. Well, the point that John is making in his statement, and I am not sure I concur completely, is that this provision by itself is a further reason for State plan States to drop out of the State plan. I don't think it is.

But I think we have to find a way to deal with the transition between the $5 million in the appropriations bill for consultation with

States and with their bill for 100 percent Federal funding for consultants in those States.

Between what the Department can say and what this subcommittee, in its wisdom, can work out, I think we can find a method to handle both those States having State plans and the States without State plans, so that the transition is rational.

Mr. Chairman, that is all I will take of your time. You have been exceedingly generous in giving me a chance to come back before this subcommittee.

I am delighted you meet at a civilized hour. The Unemployment Compensation Committee meets every morning at 8 o'clock, and after a while it gets to be a bit difficult.

I thank you, and commend you, and am most especially grateful to you, Mr. Chairman, because you have been a man of great honor, a man of your word, and holding this subcommittee's hearings so promptly and the introduction of the bill so promptly, are yet other reasons for the Members of the House to continue to have confidence in you as a chairman, and in you as a man of integrity for the work you have done through all of this whole controversy.

Mr. DANIELS. Thank you. You are very kind in your flattering remarks, and I appreciate it very much.

Bill, I have one other question of you: We have before us one bill which would place the consultation in the Small Business Administration.

I would like to say to you that I have spoken to the representatives of the Small Business Administration as to whether or not they would be interested in handling this particular problem and they expressed no interest and gave me no encouragement.

Under those circumstances, where would you think the consultation should be encouraged?

Would we still give it to the Small Business Administration or let it be with the Department of Labor, which is in charge of enforcement?

Mr. STEIGER. Mr. Chairman, at no point can I justify lodging the responsibility for consultation in the Small Business Administration. It is not equipped for it. It is not prepared for it. It does not want it.

You are absolutely right. It yet further complicates the responsibility for administration and implementation of the Occupational Safety and Health Act of 1970. We have always had a problem with which I know you are aware, and the members of the subcommittee are aware, of the potential human factor of the consultant who says, "This is what needs to be done," and a compliance officer who doesn't agree with it and says something else ought to be done.

As far as I am concerned, that human problem is one we are all going to have to recognize and it is something that can happen.

But I believe very strongly that the responsibility for the act belongs in the Labor Department. So long as we can insure that the consultant and the compliance officer go through exactly the same kind of training, get exactly the same kind of information, deal exactly with the same kinds of standards, we have a far greater chance of minimizing that human problem and all that would follow from it in terms of the perception of the employer.

So I don't want it in the SBA, and I don't think it is the right place for it. The direction your bill takes is exactly the correct direction.

Mr. DANIELS. May I follow up that question with this one: If we lodge jurisdiction with the Department of Labor, is it your opinion that enforcement as well as consultation should be under one umbrella, so that the procedures you have outlined for uniformity in training, knowledge, and so forth, can be carried out to the most effective degree?

Mr. STEIGER. I don't know that it is necessary to have them per se under one head. I guess, in a sense, if the Assistant Secretary for OSHA is the single head, the answer is yes. I do believe they ought to be separate, that we do not want the employer to feel that because they come from the Labor Department, there is somehow a plot under way whereby a visit by a compliance officer or inspector is sure to follow a consultation.

That is a part of your bill, it is a part of what I know the Department will undertake, which is separation in terms of the people who carry out the consultation function and the enforcement function.

Mr. DANIELS. Well, one of our colleagues, Mr. McCollister, testified yesterday and he disagrees with that view. He is of the opinion it would be more economical and more effective to have the enforcement officer also act as a consultant.

I happen to share your view.

I would appreciate it if you would speak to your colleague and see if we can have some unanimity of opinion on this point. I personally believe, as you do, that they ought to be separate. Whatever the consultant discovers in the nature of violation should not be held against the employer and no punitive action should be taken against him and there should not be comparing of notes between the consultant and the enforcement officer.

Mr. STEIGER. Well, I can sympathize with the aim of our colleague from Nebraska. I assume that, by and large, his view comes from this problem of potential differences between the compliance officers and consultants in terms of recommendations.

My judgment on that, Mr. Chairman, is that in spite of what a single individual might be able to do, an effort to combine consultation and compliance in the form of a single person would be self-defeating. It would work to the disadvantage of the enforcement function of the act and it would, I am afraid, blur the distinct roles that are to be played by the consultants and compliance officers.

I don't think we are better off blurring them. I think we are far more ahead in maintaining the separation between the consultant and his advice and his whole function as contrasted to the function of an enforcement officer.

I will be happy to talk to John McCollister and at least see if we can find some way to convince him separation is the better way.

Mr. DANIELS. One further question:

The Findley bill confines consultation to employers of 25 or less employers; whereas, the bill you and I cosponsored extends it to business generally, large and small.

Which do you support most strongly?

Mr. STEIGER. As a cosponsor, Mr. Chairman, of your bill, I believe it ought to be superior without regard to numbers.

As you know, the bill you and I put in was limited to 25 and under.

I think I had one in originally at 50, and then you and I cosponsored one at 25, and we did so because we were trying at the time to pull together the AFL–CIO, and George Taylor and Jack Sheehan, who had strong views on consultation and basically didn't like it, and also with the Chamber of Commerce and National Association of Manufacturers and the administration.

I never felt that a number, whether, in the Findley approach of cutting off enforcement or in the Findley approach on consultation, is the right approach to achieving job safety.

The complexity of standards is just as difficult for somebody who has 26 or 126 employees as it is for somebody who has 24 employees, so I think the Daniels bill is the correct solution to that problem.

Mr. DANIELS. Thank you, Bill.

I recognize my colleague from Connecticut, Mr. Sarasin. Any questions?

Mr. SARASIN. Thank you, Mr. Chairman. I have really no questions of Mr. Steiger, and, given his expertise in this area, I think I would be restrained from asking any questions.

I did not hear his testimony, but I did have the opportunity to quickly read through it.

I would suggest, based on Mr. Steiger's immense success in the past in this area, we just do whatever he asks us to do and go home.

Thank you. Mr. Chairman.

Mr. STEIGER. I thank my colleague from Connecticut.

Mr. DANIELS. That is indeed a fine compliment.

Thank you, Bill, for your testimony.

Mr. STEIGER. Thank you, Mr. Chairman, and members of the committee.

Mr. DANIELS. Our next witness is a distinguished Member of Congress, the Honorable John B. Anderson, a Representative from the State of Illinois, and I welcome you back to testify on this legislation.

Mr. ANDERSON. Thank you very much.

[The prepared statement of Hon. John B. Anderson follows:]

STATEMENT OF HON. JOHN B. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman and members of the subcommittee, I am again grateful for the opportunity to appear before this great subcommittee to testify on the Occupational Safety and Health Act of 1970. I was privileged to testify before you on this same subject in September of 1972, and I want to commend you on the careful and ongoing oversight you have exercised over OSHA since its inception. I think now that we've had over four years of experience under OSHA and the benefit of your oversight hearings, it's only reasonable and proper to proceed with whatever corrective or improving legislation may be necessary.

I therefore want to commend you, Mr. Chairman, and your bipartisan cosponsors, for introducing H.R. 8618 to provide for on-site consultation in those States which do not have approved State plans. I think I am safe in saying that this has been the major complaint about OSHA since its enactment—the idea that an employer cannot solicit on-site advice from OSHA without the simultaneous risk of being cited for a violation and being assessed a penalty. This complaint is certainly reflected in most of the OSHA-related mail I have received from businessmen as well as in my personal discussions with them in my district. Prior to my last appearance before this subcommittee, I conducted an OSHA mail survey of businessmen in my 16th Congressional District of Illinois, and again, the lack of on-site consultation was the most frequently mentioned complaint. As one businessman wrote:

"We can (only) call the Regional Office and talk to a technical advisor as I have done. Results are very poor and most confusing. I asked seven pointed questions with full explanation of conditions. I received two straight answers and five answers that 'this office believes you can do this, but an inspector may not and still give you citations.' "

Another executive wrote: "In many cases, these standards require companies to interpret requirements, causing many unneeded cash outlays because of errors committed in good faith." Mr. Chairman, this problem is a particular hardship for the small businessman who cannot afford to have a full-time technical advisor or safety engineer. We are all by now familiar with the mounds of regulations which have been issued by OSHA and I think it's unreasonable to expect anyone, least of all a small businessman, to be fully familiar with all the regulations under which he must labor. He would have to spend his every working hour (plus a few sleepless nights) for several months just to read all the regulations; and even then he'd need a special decoder device to translate many of the regulations into understandable terms.

Mr. Chairman, I recognize and appreciate the fact that OSHA is premised on the concept that the threat of first-instance citations is the best insurance for achieving voluntary compliance in the first place. However, I think we must also recognize that OSHA will only be as effective as it is understood by those responsible for implementing the standards in the workplace. If implementation is viewed as confusing, frustrating or impossible, with no resort to competent on-site consultation and assistance without the risk of penalty, then the prevailing attitude in many instances may well be, "Why even try to comply? I'll take my chances that I'll never be visited by an inspector."

Mr. Chairman, I commend you on your initiative in trying to strike a delicate balance between the need for retaining first-instance citations for inspection visits and providing for consultation visits. I think this is a long overdue reform in OSHA and I would submit that it will further enhance the achievement of voluntary compliance.

In concluding my statement, I want to raise just a few points and questions about the specific provisions of H.R. 8618 for your consideration. First, I am wondering how this new on-site consultation program will dovetail with the program just begun this May under the Steiger amendment to the fiscal 1975 Labor-HEW Appropriations Act (for which funding has been continued in the 1976 Act just passed by the House). As I understand the Steiger program, the Secretary may now contract with State agencies to provide on-site consultation in those States without approved plans, on a 50-50 matching basis—the same as applies to States with approved plans. It is my understanding that some 15 non-plan States have already signed on under this program. Would H.R. 8618, which provides 100% Federal funding for on-site consultation through OSHA, rather than through State agencies, supersede the Steiger program completely or run concurrently in the case of those States which have already signed on?

Secondly, on a related matter, I would urge the subcommittee to at least consider as an alternative to H.R. 8618 a revision of the current Steiger plan on say an 80-20 Federal-State matching program, while at the same time providing an identical matching formula for on-site consultation programs in those States which have approved plans. My concern here is that in providing full Federal funding for these purposes in non-plan States, we are creating one more incentive for plan States to drop their plans in favor of Federal preemption. It's my understanding that only 22 States now have approved plans, down from a high of 26. Of those 22, 20 have opted for on-site consultation funding.

Third, while I agree with the provision in subsection (d)(2) which requires the Secretary to take appropriate action under section 13 (judicial relief) if an employer does not take corrective action on an imminent danger disclosed during a consultative visit, I question whether the consultants should also be required to report second-degree or "substantial probability" violations which are not corrected in a reasonable time. I appreciate the fact that these still are very serious violations, but I wonder if we might not be defeating the original purposes of this bill by inhibiting employers from requesting consultation visits since the consultants would also be viewed as informers for the enforcement officers. It seems to me that an alternative means of dealing with serious violations disclosed during a consultative visit would be to mete out doubly stiff penalties on a subsequent inspection visit for any noted violation in the consultation report which had not been corrected. If an employer knew that he would be so dealt with if he did not correct a violation which had been called to his attention during a consultation visit, I think there would be no problem with compliance. It seems to me that while H.R. 8618 in subsection (d)(5) carefully prescribes a separation of the consultation and inspection functions, it perhaps too closely links the two in subsection (d)(2), and this in turn may be counterproductive to a successful consultation program.

In conclusion, Mr. Chairman, I again commend you and your colleagues on taking this important, constructive and urgently needed initiative to provide on-site consultation on a priority basis for small businessmen. If my reading of my district's businessmen is at all reflective of the mood of the national business community, and I think it is, then this is one of the most positive reforms in OSHA we can take in both eliminating much of the confusion and anger which exist and at the same time achieving more effective and comprehensive voluntary compliance. I hope my specific questions and suggestions will be of some benefit to you in your deliberations; but in any event, I hope you can soon report this or a similar bill so that the House can take action in this vital area. Thank you.

STATEMENT OF HON. JOHN B. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ANDERSON. Mr. Chairman and members of the committee, I am certainly grateful for the opportunity you have given me to appear again before this distinguished committee to testify on the Occupational Safety and Health Act of 1970, and as you just indicated, this is not my initial appearance before the committee. We were here on the same subject in September of 1972.

Let me begin by commending you, Mr. Chairman, and your subcommittee, for the very careful and ongoing oversight you have exercised over OSHA since its inception. I think now that we've had over 4 years of experience under OSHA and the benefit of your oversight hearings, it is only reasonable and proper to proceed with whatever corrective or improving legislation may be necessary.

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Mr. Chairman, I recognize and appreciate the fact that OSHA is premised on the concept that the threat of first-instance citations is the best insurance for achieving voluntary compliance in the first place, but I believe we must also recognize that OSHA will only be as effective as it is understood by those responsible for implementing the standards in the workplace. If implementation is viewed as confusing, frustrating or impossible, with no resort to competent on-site consultation and assistance without the risk of penalty, then the prevailing attitude in many instances may well be, "Why even try to comply? I'll take my chances that I'll never be visited by an inspector."

So, Mr. Chairman, I commend you on your initiative in trying to strike a delicate balance between the need for retaining first-instance citations for inspection visits and providing for consultation visits. I think this is a long overdue reform in OSHA and I would submit that it will further enhance the achievement of voluntary compliance.

In concluding my statement, I want to raise just a few points and questions about the specific provisions of H.R. 8618 for your consideration. First, I am wondering how this new on-site consultation program will dovetail with the program just begun this May under the Steiger amendment to the fiscal 1975 Labor-HEW Appropriations Act (for which funding has been continued in the 1976 Act just passed by the House). As I understand the Steiger program, the Secretary may now contract with State agencies to provide on-site consultation in those States without approved plans, on a 50–50 matching basis—the same as applies to States with approved plans. It is my understanding that some 15 nonplan States have already signed on under this program. Would H.R. 8618, which provides 100 percent Feceral funding for on-site consultation through OSHA, rather than through State agencies, supersede the Steiger program completely or run concurrently in the case of those States which have already signed on?

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Did you wish me to yield at this point?

Mr. Daniels. The question you raised here is a question I am trying to submit to the Secretary's representative when they appear later on this morning, because it does create, I visualize, a problem arising.

Not only that, another question comes to my mind, too, under HEW labor appropriations that we approved not only for last year but also for fiscal 1976, we appropriated $5 million. The bill under consideration only authorized an appropriation of $2 million, so we have $5 million and $2 million, and which funds will the Department use; or do they intend to use both funds, which I think is a good question to put to them today, and it is something we must resolve before reporting on the legislation.

Mr. ANDERSON. Well, it was presumptuous of me to perhaps, by mentioning this, assume that the chairman had not already thought of the same question, but I am pleased to know you are going to consider that issue in subsequent testimony before your subcommittee.

Third, while I agree with the provision in subsection (d)(2) which requires the Secretary to take appropriate action under section 13 (judicial relief) if an employer does not take corrective action on an imminent danger disclosed during a consultative visit, I question whether the consultants should also be required to report second-degree or "substantial probability" violations which are not corrected in a reasonable time. I appreciate the fact that these still are very serious violations, but I wonder if we might not be defeating the original purposes of this bill by inhibiting employers from requesting consultation visits since the consultants would also be viewed as informers for the enforcement officers. It seems to me that an alternative means of dealing with serious violations disclosed during a consultative visit would be to mete out doubly stiff penalties on a subsequent inspection visit for any noted violation in the consultation report which had not been corrected. If an employer knew that he would be so dealt with if he did not correct a violation which had been called to his attention during a consultation visit, I think there would be no problem with compliance. It seems to me that while H.R. 8618 in subsection (d)(5) carefully prescribes a separation of the consultation and inspection functions, it perhaps too closely links the two in subsection (d)(2), and this in turn may be counterproductive to a successful consultation program.

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Mr. DANIELS. John, on behalf of the committee and myself personally, I want to compliment you for a very well thought out and constructive statement.

I am not going to ask any questions. However, I recognize my distinguished colleague from Connecticut, Mr. Sarasin.

Any questions?

Mr. SARASIN. Thank you, Mr. Chairman.

I really have no questions except I wish to compliment the gentleman also for his statement and especially the comment you make concerning the possibility of an 80–20 plan.

It is a matter of concern I think to New York and New Jersey, or rather it was since they have either opted out of the plan or are about to.

I know my own State of Connecticut looked at giving up its own plan because obviously, rather than get 50 percent, the Federals will take over the whole operation.

I hope it does not happen, because, as the gentleman points out in his statement, and, as is true, we are talking basically about a voluntary situation here. There is no way we can inspect every plant operation or every worksite in the country. It must be, therefore, one that the employer really has an incentive to go along with.

I again appreciate the gentleman's comments.

Mr. ANDERSON. I thank the gentleman; and, incidentally, on the point he just raised, we have had the experience in my home State of Illinois, where they have dropped their plan.

The gentleman says they were perhaps contemplating taking that action in his State of Connecticut, and it already happened in Illinois, which, of course, is a further reason for my being concerned.

Mr. DANIELS. The State of New Jersey has dropped the plan and New York has repealed its law on the subject as well, so you have made a very fine recommendation there.

Mr. ANDERSON. Thank you.

Mr. DANIELS. Are the representatives of the Department of Labor here, Mr. Marshall Miller and Mr. Ben Mintz?

I note there is a quorum call on the floor and rather than getting started and breaking up in a couple of minutes, I would prefer to declare a recess to respond to the quorum call and we will return immediately. I am sorry for the inconvenience.

[Short recess.]

Mr. DANIELS. The Subcommittee will come to order.

Our next witness will be Mr. Marshall Miller, Deputy Assistant for OSHA, U.S. Department of Labor.

Would you introduce the gentlemen who accompany you, Mr. Miller?

[Prepared statement of Marshall Lee Miller follows:]

PREPARED STATEMENT OF MARSHALL LEE MILLER, DEPUTY ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH

I wish to thank you, Mr. Chairman, and the members of the Committee for the opportunity to appear today to present the views of the Department on H.R. 8618, a bill to amend the Occupational Safety and Health Act of 1970 to provide additional consultation and education assistance to employers.

The Department of Labor is in general agreement with the purpose of this bill. It is our belief that on-site consultation should not be viewed as a substitute for enforcement, or even as the most effective means for assisting employers seeking to comply. In many instances, the Federal assistance desired can be offered more effectively through group seminars and education, through cooperative programs with industry and trade associations, labor organizations, and professional groups, or by informational materials addressed to the specific needs of individual groups of employers. This bill, in amending section 21 of the Act, would facilitate the conduct of a balanced program of on-site as well as off-site education and consultation for both employers and employees.

As you know for legal and policy reasons we have not allowed OSHA inspectors to visit workplaces solely to give on-site consultation.

Section 9 of the Act has been interpreted to mandate that the authorized representative of the Secretary, after inspecting worksites and observing any violations, must issue appropriate citations. An on-site consultation program not established by legislation could have diverted essential enforcement resources.

Although Departmental employees have been required to cite employers for violations observed in the workplace, this requirement has not been construed to apply to State operations or State employees making consultative visits. In the case of the 22 States or jurisdictions which have DOL approved State occupational safety and health plans, with 50 percent Federal funding, 20 provide on-site consultation. As of last April, 145 State consultants were providing consultations at a rate of approximately 18,500 consultations per year. In addition, OSHA was authorized by its 1975 appropriation to allocate up to $5 million to States without plans to furnish workplace services to employers under the contracting authority of section 7(c)(1) of the Act. These services are also funded at the 50 percent level. Fifteen States employing 208 consultants have signed agreements with OSHA to provide on-site consultation services to small businesses. There remain, however, some 20 States and jurisdictions which do not themselves offer consultation.

Any legislation to provide OSHA with the authority to perform on-site consultation should contain the following essential elements:

(1) There should be a separation between inspection personnel and consultation personnel. And it would be our intention, if this bill is enacted, that there would be no reduction in our compliance effort.

(2) While consultation visits should not trigger enforcement actions by OSHA, provision should be made to guarantee corrective action where the visit discloses hazards posing an immediate danger to employees or where there is a substantial probability of death or serious harm to employees.

(3) The consultation program should give priority to small businesses and relatively more hazardous workplaces.

(4) The consultation program should be only one element of a broad program of educational assistance to employers and employees.

H.R. 8618 contains provisions which take into account all of these elements. Should the bill be enacted, we would emphasize a balanced program of consultation and education. It is envisioned that this program would assist employers and employees in hazard recognition and in the understanding of OSHA standards, rather than providing detailed engineering and economic advice.

Thank you, Mr. Chairman.

STATEMENT OF MARSHALL MILLER, DEPUTY ASSISTANT SECRETARY FOR OSHA, U.S. DEPARTMENT OF LABOR

Mr. MILLER. Thank you. Mr. Chairman, and members of the committee for allowing us to present the views of the Department of Labor.

I would like to introduce on my right, Ben Mintz, Associate Solicitor of Labor for OSHA, and on my left, immediate left, is Dick Wilson, who is Deputy Associate Assistant Secretary for State plans and regional programs, and on the far left is Ray Randlett, Legislative Liaison Officer for OSHA.

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Thank you, Mr. Chairman.

Mr. DANIELS. Thank you, Mr. Miller.

I note by the clock that we have a vote on the House floor, so this is one of the problems in trying to conduct committee meetings at the same time the House is in session; so if we depart for a few moments, I hope you understand it is not due to any action on the part of this committee.

Mr. MILLER. Yes, Mr. Chairman, thank you.

Mr. DANIELS. However, we can continue until the first bell rings, and I have a series of questions which I would like to put to you and ascertain your views as well as the views of the Department on this subject matter.

Does the Department of Labor want this program and do they endorse this legislation?

Mr. MILLER. Yes, we do endorse this legislation. We think we could effectively handle this program. We would defer, however, to your judgment on the best way to structure it. We understand you will consider several alternatives.

Mr. DANIELS. How would the Department of Labor view training of SBA personnel to administer on-site consultation?

Mr. MILLER. We would be willing to train or help in anyway we could on this, if, in fact, SBA or any other agency were willing and in a position to take this program on.

Mr. RANDLETT. However, Mr. Chairman, I think there has been an indication that SBA would be unwilling to accept this program. There is also the problem which we have to point out that Mr. Steiger raised. I am referring to the problem of separate agencies. Information that would be in our possession might not be as readily passed on to employees of the SBA.

Mr. DANIELS. Well, I share Mr. Steiger's view, and I endorse placing the responsibility in one department.

Of course, it would be in separate agencies, though.

Mr. MILLER. Mr. Chairman, we don't feel it is our place to speak definitively for SBA in this matter. What we are planning, and this may be of help to you, is an attempt to build up an integrated compliance, education, consultative framework, so that all of these factors can be working together. It would facilitate the development of this strategy if all elements of the arrangement were within OSHA, but we are not trying to speak, again, for SBA.

Mr. GAYDOS. Will you yield?

Mr. DANIELS. I will yield.

Mr. GAYDOS. You say it would be a factor in progressive development in combining the two.

Would you explain it a little further?

Mr. MILLER. A compliance program can clearly be an incentive for employers to want the additional assistance that education and consultation can provide.

All of these elements should work together and I think up until now they have not been viewed as an unified package.

We are hoping to be able to construct such a program.

Mr. GAYDOS. How would your unification encourage employers to utilize a service or not utilize some service?

Give us some practical examples, so I can understand it with you.

Mr. MILLER. All right.

Basically, we have been talking about consultation but section 6 of the bill also makes provision for education.

There are many instances, for example, where it would be more effective to be able to concentrate on groups of employers both in a geographical area and within a given industry for the purpose of talking to them about hazard identification and about problems common to all of their industry. Such an arrangement is better than going to individual plantsites and pointing out those same problems in every single site.

Mr. GAYDOS. Are you familiar with Liberty Mutual Insurance Co.'s experience in providing on-site consultation to small business and big business?

Mr. MILLER. They do about 60,000 inspections a year.

Mr. GAYDOS. Do you know about their inspectors, how successful they were and whether or not people utilized their service?

In a free enterprise system, the new federalism we are talking about, which I am sure you were pledged to support, the new federalism is, you want to let the States do what they can.

I am asking you, and we will have to leave again to vote, and I will come back to give you a fair chance; take a look at the Liberty Mutual Insurance experience; and if you have statistics, I will ask some questions. They have been doing this since the act was passed, providing specifically a no-charge consultative service, and I am going to surprise you with the results of it, but I think, Mr. Chairman, we want to go over to vote.

Mr. DANIELS. The committee will recess for a few minutes, and will return immediately after the vote.

[Short recess.]

Mr. DANIELS. The subcommittee will come to order.

Mr. Miller, how many requests for consultation do you expect?

Mr. MILLER. That would be difficult to predict. We can begin by basing it on State data.

Twenty of the States with approved plans had 145 consultants as of last April. As I mentioned, there were 18,500 consultations and there were about 500 or 600 backlog on that.

So those figures give you a range of consultations, but we cannot really know before the program is implemented what the true extent will be.

Mr. GAYDOS. Will you yield?

Mr. DANIELS. Yes.

Mr. GAYDOS. You can possibly perceive, I presume, after enactment of this legislation, there might be numerous individuals applying for onsite consultation.

How would you cope with, say, a request of 5, 10, or 50 times the present number? How would you cope with that?

Mr. MILLER. Since one of our criteria for consultation would be "Let's provide the consultation in the areas where it is most needed," we need to know, quite apart from individual demand, where the consultants are most needed.

For example, if we had Ford and General Motors which asked us for free consultation, we might treat the request separately from smaller business.

I think we would like to have a study which has a breakdown by geographical area, industry, size of industry, where we could probably have most impact.

Mr. GAYDOS. What about a small businessman with a dangerous situation and he asks you for on-site consultation, and you don't have him in your breakdown, and you cannot get to him, and he then, as a matter of course, is ignored and you are monkeying around with General Motors as you properly point out. What about him? Is he denied equal access to consultation?

Mr. MILLER. The needs of the small businessman are expressly provided for in the bill; so is the particularly hazardous workplace. Therefore, our study would also reflect these express priorities; yes.

Mr. GAYDOS. I will ask you a practical question: How fast do you think, given enactment of this bill, how fast do you think you can bone up and get properly qualified people because you have not at this time fully filled your complement of inspectors for on-site inspection, not alone consultation; so how long would it take you to bone up and get into business, tool up, get enough hired and trained and all of the other ramifications, and get on with the business of providing consultative services in all areas you so properly categorized you would have available for the service?

Mr. MILLER. I would think it would take several months because of Civil Service considerations.

Mr. GAYDOS. Several months.

OK, we will come back to that.

Thank you, Mr. Chairman.

Mr. DANIELS. What is the future of the present consultation program in view of the fact we have one plan under 18(b) and another under 7(c)(1), and will these programs be merged, and what will happen with the State personnel?

Mr. MILLER. No; I don't think it is planned to merge them right now. In fact, they presently offer an advantage. They give us several different programs which we could examine for the purpose of learning, or trying to learn, the answer to the type of questions Congressman Gaydos is asking us right now.

We would like to watch their experience. Time may take its toll. Programs will change, but right now, we would not contemplate changes.

Mr. DANIELS. We have 15 States that have consultation on a 50-50 basis, which would utilize State personnel, and then under 18(b), we have 20 States that are operating under that plan, also on a 50-50 funding basis, likewise using State personnel.

However, under the bill under consideration, which I have introduced, it provides for 100-percent Federal funding for consultation.

Now, will we have three different plans operating here?

Mr. MILLER. I would expect that some of the States could be attracted by the extra level of funding while other States might say, "We don't care; we still want our own program."

I think that is a decision that would best be left to the States, and we would leave that to you and to the States.

Mr. DANIELS. What do you anticipate will be the results of funding then three separate plans with regard to those 20 States which are now operating under section 18(b)?

Mr. MILLER. It is hard to predict. I think some of them possibly would drop out. I will defer to Dick Wilson to answer this technical question.

Mr. WILSON. I think it is difficult to predict right now, Congressman. If we consider the States under the State plans that have opted for a total program which encompasses enforcement as well as consultation, it is difficult at this time to predict what the effect of this bill would be on those plans.

I can't go beyond that at this point because we don't know. Some might opt for letting the Federal Government run the program in their State.

I want to make the point, however, that under your bill we are talking about a slightly different category of activity because we are talking about federally funded Federal employees, but the other considerations involve State operated programs with State personnel, although under contractual arrangements with the Federal Government.

Mr. DANIELS. They will receive 50 percent of funds from the Federal.

Mr. MILLER. That is right.

Mr. DANIELS. Mr. Gaydos.

Mr. GAYDOS. I will follow the chairman on the same point.

Am I unreasonable when I conclude the chance or percentages would be 99 to 1 that all of those States would opt to discard their 50 percent participation and let the Federal Government pay for the tab particularly since we see so many States that are bankrupt or on the verge? I cannot understand the somewhat easy approach you take to the subject, and say, "We don't know what is going to happen," it may happen or not, and I think it is a dangerous area, because I think it is obvious, just applying fundamental principles and commonsense, that all of those States with few exceptions, most of those States are going to say, "Look, we don't have money; we have a lot of budget problems, the Federal Government can take it, we are going to pull out of this obligation with 50 percent and let the Federal Government do it."

I think you will find that occurring and I think it is a reasonable conclusion.

Mr. MILLER. You may eventually be right. But I feel that as of now we don't know that as a certainty, because they will be giving up a program they worked hard to develop throughout the total OSHA program. They would be opting to drop it and take a limited activity. I don't know that they would be willing to do it.

Mr. GAYDOS. Assuming I am right and the fears I have, assuming they materialize, what is going to be your response to the situation?

I foresee a very complicated situation. The States pulling out of the program, and our having to look and scramble for personnel. There is no guarantee we could pick up the personnel.

I am raising these points with this thought in mind. Possibly we should look at that danger area and possibly put something into Mr. Daniel's bill to take care of that eventuality. That is all I say.

I think it is a dangerous area, and I am submitting for your consideration that you are ignoring it and I think it is a complicated area, and we ought to be practical and assume the worst will happen.

Mr. MILLER. You are right, Congressman. We must always take into account the worst that might happen. Yet, our first consideration is, "How can a service be provided in education and consultation to the businesses that need it so that accidents can be prevented. That is the first consideration.

Perhaps, we should let consideration as to who does the job or how, be a part of the much larger issue of the needs for consultation. Emphasizing the larger considerations will show that we are avoiding parochial or jurisdictional squabbling.

Mr. GAYDOS. My most serious response to you would be right now we have a great system working and we have two-thirds of our States participating, and effectiveness has been proven and the States rights have been adhered to and new federalism is in business, and I don't know why we are monkeying around with it trying to substitute something for it. Give me a reason.

Mr. MILLER. One reason is one-third of the working force is not covered by any plan.

Mr. GAYDOS. They could be covered.

Mr. MILLER. They could be covered, but they are not because the States themselves have decided not to be covered.

Mr. GAYDOS. Thank you, Mr. Chairman, I appreciate your allowing me to butt in.

Mr. DANIELS. Why was the 7(c)(1) consultation funding program funded on a 50–50 basis?

Mr. WILSON. Primarily so we would not provide a disincentive to those States that want to operate a total program under a 18(b) plan and, of course, simply to buy more services. With the States putting up 50 percent of the funds and our Federal funds will go twice as far.

Mr. DANIELS. Would more States participate if it was funded on a 90- or 100-percent funding level?

Mr. WILSON. I am sure additional ones would have been interested in participating.

Mr. DANIELS. What incentive is there for a State operating under 18(b), and there are 20 such States, to participate in the program on a 50–50 funding basis; whereas, under the bill under consideration they would receive 100-percent funding?

Mr. WILSON. Again, I want to stress a key point in the program. Non-plan States cannot, under 100-percent funding by means of 7(c)(1) contracts, operate the entire range of activity and health programs which other States can operate under an 18(b) State plan.

I think that is the main incentive, States want to undertake an entire range of responsibilities. They want to have enforcement as well as consultation; they want voluntary compliance programs, standards setting mechanisms and, in short, have a complete program at least as effective as the Federal program.

Mr. DANIELS. How much money is needed for on-site consultation? The funds in this bill would only provide, in my judgment, about four to six consultants per State in the third year.

Mr. MILLER. First of all, I would not anticipate putting an equal number of consultants in each State. If the State plans continue as you would like, then we would concentrate on those States that do not have provisions for carrying out on-site consultation.

One of our problems is we want to make sure that we can train and hire the people we want. By this, I mean training them in an orderly reasonable fashion so as to be able to afford the best consultation services possible, rather than quickly hiring people without regard to potential quality. It will take some time to properly assimilate the personel we need.

Mr. DANIELS. Will Utah, in future plans, need on-site consultations to be made at least as effective as the Federal law?

Mr. MILLER. That argument has been made and that is probably the case; yes.

Mr. DANIELS. The appropriation bill that we passed in the month of June provides for HEW and the Labor Department appropriation of $5 million. The bill under consideration here authorized an appropriation of $2 million for the first year.

Do you think, or do you propose to utilize the $5 million under the recent HEW-Labor Department appropriation as well as $2 million provided for under this bill if this bill is enacted into law?

Mr. MILLER. We are a little uncertain on that provision on exactly what is meant. Are we taking $2 million and adding it to $5 million, or is it really seen as a separate program?

I am not sure I understand exactly what is intended by the provisions of the bill.

Mr. DANIELS. Well, through your experience with legislation so far, what would you consider a reasonable—a fair amount of money to appropriate for the first year of the life of this bill under consideration?

Mr. MILLER. For the first year the sums you have suggested seem quite reasonable. This will also give us time of course to see what the demands are as well as to conduct the study I suggested—the one enabling us to determine how the consultants can be used most effectively.

Mr. DANIELS. If the demands for consultation are far in excess of what you anticipate, will the Department come forward and request the necessary funding for such consultations?

Mr. MILLER. Within the parameters of OMB and the administration's position, yes, we will.

Mr. DANIELS. OMB restricts all requests for funding, we know that, but I would like the Department, however, to take a more vigorous stance.

Mr. MILLER. You will be made aware of our problems, if we are swamped, yes.

Mr. DANIELS. Does OSHA feel it necessary to keep enforcement personnel and consultants separate?

Mr. MILLER. Yes, we do. I believe it should be clear to businessmen who have voiced considerable fears about this, that when a consultant comes in, he is coming in as a consultant to help.

The exceptions to his straight consultative role are both reasonable and quite limited. We would like to keep that distinction maintained.

Mr. DANIELS. I am sorry for another interruption, but we have another vote on the floor. We will be back in a few minutes.

[Recessed.]

Mr. DANIELS. The subcommittee will come to order.

Mr. Miller, when the employer requests an on-site consultation and an inspection and certain violations are discovered and a report submitted to the employer, assuming that the consultant was in error, would the Secretary take this fact into consideration in considering the penalty to be imposed?

Mr. MILLER. I think definitely so. Right now, under our formula for computing compliance penalties, it is about a 20-percent weighting that is given to good faith, size of operation, number of employees exposed and other calculation.

The formula may not be enough for this special situation. I believe we may need additional regulations that would provide that most or all of the penalty could be avoided, if good faith were present.

Mr. **Daniels.** One of the serious complaints registered to me and other members of the committee with regard to the enforcement of OSHA has been the arbitrary attitude of the inspectors in issuing citations for minor infractions.

This has brought a great deal of opposition to the concept of OSHA, so I do trust that in the future the Secretary will have to review the circumstances, especially now that we are providing for a new program.

I can conceive where the consultant might be in error may require certain violations to be corrected in a period of time which the employer may consider unreasonable. If that is the case and the employer cannot comply within the stated period of abatement, then the Secretary will take this into consideration.

Now, throughout our hearings this question has arisen constantly. If an employer disagrees with the OSHA consultant in a certain situation that threatens serious harm or with the abatement date, what appeal rights will be available to him before the consultant turns the situation over to inspectors?

Mr. **Miller.** He always has the right, and this is true under compliance procedures as well, to go to the area director or in extraordinary circumstances, if he feels he has a special case to go to the regional administrator and present his views at that level. If warranted something can be worked out.

Mr. **Daniels.** Do you have a copy of H.R. 8618 before you?

Mr. **Miller.** Yes, I do.

Mr. **Daniels.** I would like to have your view on the interpretation of section (d)(1). It says:

> In order to further carry out his responsibilities under this section, the Secretary may visit the workplace of any employer for the purpose of affording consultation and advice to the employer. Such consultative visits may be conducted only upon a valid request by the employer for consultation and advice at the workplace concerning the obligation of the employer under section 5.

How do you interpret the valid request of the employer?

Mr. **Miller.** I think that language was borrowed from the compliance language which talks about a valid complaint. I am not sure there is a need for the word "valid."

Mr. **Daniels.** One witness recommended dropping the word "valid."

Mr. **Miller.** We would have no objection.

Mr. **Daniels.** Would you define what is meant by a serious violation and perhaps give us some examples?

Mr. **Miller.** I think the statute, does a better job than I could on that.

As you well know, "Serious" is a substantial probability of death or serious injury to the person, if I paraphrase the language correctly.

To give an example, you hear all of the time about horror stories of OSHA perhaps citing somebody for a serious violation that may not be serious but my observations have been to the contrary.

I have never seen in any inspections I have gone on so far where a hazard that is nonserious is treated as a serious violation. But here is an example of one that I would consider serious: It was on a construction site of a 70-story hotel and on the 70th story there was a large crane with oil on the base around the crane, and there was no ladder for the workmen to climb down from the crane. So it was a precarious descent.

Furthermore, the way the workmen had to come down was over an elevator shaft, which I presume went down 70 stories. If, by chance, a workman with slippery shoes had fallen, then with no ladder, he would have fallen down either the elevator shaft or impaled himself on the reinforcement bars around the shaft.

And that is not just hypothetical. There was an accident the day before where a person was almost killed, but he fortunately caught on an obstruction part of the way down and so he was only injured instead of killed. That was treated as nonserious.

To me, however, that is serious violation. That is just one type of example. On the same site, to give you another example, there was an elevator that was for the use of construction workers; that is, it was on the outside of the building. There was no door on the elevator. So, as the workers waited for the elevator to come up, they could have inadvertently walked out onto thin air and dropped 70 stories. The railings around the building were inadequate in many respects. There were gaps in them, easily large enough for a person to fall through, and I think if a 200-pound man had pushed against them, in many places they would have simply given way.

Those are the sorts of conditions which are serious.

Mr. MINTZ. Mr. Chairman, the act expressly defines "Serious violation" and our interpretation of the statutory language is contained in some detail in our field operations manual.

There have been a number of decisions of the Occupational Safety and Health Review Commission which accept the DOL's definition of "serious" and apply it to a myriad of different facts and there is at least one Court of Appeals decision affirming the definition and our interpretation of it.

Mr. DANIELS. The section you refer to states that a serious violation is deemed to exist where there is substantial probability that death or serious physical harm would result from a condition which exists.

Now, do you deem it necessary to further define the words "substantial probability"?

Mr. MINTZ. We do consider it necessary and we have further defined the concept of "substantial probability" as best we could in general terms.

Mr. DANIELS. Could you verse the committee, then, on what you feel those words "substantial probability" mean, so we may incorporate it in our report in the event this legislation is reported favorably?

Mr. MINTZ. When the committee begins drafting the report, we shall furnish to you our definitions both in our field operations manual and the pertinent decision material, and these will give you a basis for the committee report.

Mr. DANIELS. What percentage of OSHA inspections result in citations with serious violations?

Mr. MILLER. I think it is approximately 3.9 percent of inspections have at least one serious inspection in them.

The total number of serious violations out of the total number of inspections is about 1 percent.

Mr. DANIELS. What is the total number of violations, and how many violations would you equate 3.9 percent to?

Mr. MILLER. Probably, well, I have the figures here and we will furnish them to the committee.

Mr. DANIELS. Do you have the figures with you?

Mr. MILLER. I think; I will see if I can find them.

OK, 3.9 is out of a total, this is number of inspections—was based from January to May, 1975; so these are half-year figures.

Mr. DANIELS. A period of about 5 months?

Mr. MILLER. Yes.

Total number of inspections is 35,000, and I am rounding it out, inspections with serious citations is 1,400. That is 3.9 percent.

Total number of violations, again, I am rounding it 145,000.

Total number of serious violations is 1,900, approximately 1.3 percent.

The average dollar amount for penalties is $32.

Mr. DANIELS. What is the average fine per serious violation?

Mr. MILLER. Around $600. For non-serious, it is running about 13, between 10 and 15.

Mr. DANIELS. Now, you say the average fine for non-serious violations is $13?

Mr. MILLER. Yes.

Mr. DANIELS. Serious violation?

Mr. MILLER. Around $610 is the latest figures we have.

Where a consultant has not been satisfied that an employer has eliminated a serious hazard, the Secretary, meaning the enforcement Arm of OSHA, may take appropriate action.

Several witnesses have endorsed the use of the word "may" as opposed to "shall." Can you tell this committee what some of the options would be for the OSHA enforcement arm in such a case?

Mr. MILLER. Mr. Mintz will answer this one.

Mr. MINTZ. I would like to answer the question in the context of the bills provision. Where the consultant is not satisfied that a serious type hazard has been abated, he would refer the particular matter to the enforcement arm of OSHA. At that time the enforcement arm, the compliance personnel, would evaluate the matter described by the consultant and determine whether or not an inspection should be conducted and citation issued.

There may be some circumstances where the consultant's report on the serious hazard would indicate that no enforcement is necessary, possibly there is no violation of a standard.

In that context, we understand the language connotes "may". However, in the case where the report indicates serious violations, we would expect in normal course that an appropriate inspection activity will take place by compliance personnel.

Mr. GAYDOS. Do you approve of the word "may" to be inserted in the place of the word "shall" ?

Mr. MINTZ. Mr. Chairman, line 24, page 2, the bill says, the Secretary may take appropriate action under the Act."

So the bill does have the language "may".

Mr. DANIELS. Thank you.

I now recognize the gentleman from Connecticut, Mr. Sarasin. Any questions?

Mr. SARASIN. No, Mr. Chairman. I yield to Mr. Gaydos, but I may want to follow up on some of his comments.

Mr. DANIELS. I recognize the gentleman from Pennsylvania.

Mr. GAYDOS. I thank the chairman and my colleague, Mr. Sarasin.

Let me ask, are you familiar with the Bailey's Crossroads disaster we had here some 2 years ago?

Mr. MILLER. I am only acquainted with it from the material in the oversight hearing for 1974, and the fact that my inlaws lived in the complex.

Mr. GAYDOS. They testified before this committee and you are not familiar with the nature of the fine or circumstances surrounding that catastrophe?

Mr. MILLER. By hearsay, I understand the penalty was around $15,000.

Mr. GAYDOS. For your information, let us not parlay, but we have the testimony here and it was testified that the total fines were $13,000 in that case and we had 46 injuries and 14 deaths.

The point I am making is that it is very difficult, even presuming that the contractor on that job, or that apartment building was sincere and responsive in all respects, it is very difficult for an employer himself to determine what is serious.

Now, apparently, we have, by using, not deductive, but inductive reasoning, going backward, we have to presume there was a serious condition at the workplace because 14 men died and 46 were injured and your fines indicated—and you said the average fine is $600 for a serious violation, and this happened to accumulate up to $13,000; so we have to say it is very serious.

Are we destroying what the original intent of the Act is, that is, that consulting services must be separate and apart because, of course, if you start changing "may" to "must," and all of that business, you get back into the old problem we had where the cry in unison from all businesses throughout the country and the Chambers of Commerce was, "Give us a chance for consulting services," and you have not done it.

I am afraid looking at it from this aspect, you are going to be regressive and go back and raise the same specter among the business people of them being afraid that the consultant's services are going to end up being preliminary to a citation.

Now, we argued and debated this very thoroughly on the House floor when we amended the appropriation language to include consulting services under a State rule, you remember that, and we had $5 million at that time.

I can't understand the haste that is evidenced by you and some other witnesses to do away with what we so meticulously put together at that time.

Let me cite to you, and then I would like your response, you may agree with Mr. Stender or not, but he is from your Department, and he testified before Mr. Dan Flood of the Appropriations Committee and here is what he said, and I will read it to you.

In response to a question, "Mr. Stender, do you want any changes?" here is what he said at that time.

Apparently, maybe he has changed or if he is with you?

Mr. MINTZ. Changed, in what?

Mr. DANIELS. Is he still with the Department?

Mr. MINTZ. He is on leave.

Mr. GAYDOS. He is on leave. Be that as it may.

Here is what Mr. Stender said: "I do not have recommendations for changes in the act at this time."

I am quoting verbatim.

"I think that act is proving itself to be a good act. I think, by and large, that we can proceed to develop the full potential of the act without amendments. The area of training and consultation, as some of us call it, probably needs further emphasis, stronger emphasis than it has had. We hope to be able to bring that about, but I do not believe we need to change the law to do it.

"So I do not have any recommendations which I would like to submit at this time for any change in the act."

That is his language.

You apparently changed positions, the Department has, and I am presuming you are the spokesman and I wonder if you can explain to me why such a radical change?

Mr. MINTZ. It is not a radical change. We did not sponsor this bill.

Congressman Daniels and Congressman Steiger have been interested in introducing it and we were asked for our comments. The question asked was, "Is this a reasonable bill?"—and we said "Yes, it is."

Mr. GAYDOS. Well, let me go further then.

Also, before the same committee and in response to a question by Congressman Conte as to whether $5 million for on-site consultative services in States with no OSHA-approved plans was a drop in the basket and he stated:

"These dollars provide a prudent startup capability for consultation until we learn more about the actual demand for this kind of service."

So, in my humble opinion, it appears he admitted as a matter of record they need more time.

Again, I come back and ask you the question: Why this desire to change something that is at least starting to work, and by admissions of your representatives before the Committee on Appropriations, one of your representatives stated he needs more time, that it is working and we don't need changes.

That is what bothers me. Why this change?

Mr. MINTZ. That is not really a change. It is an additive. As you will note, the bill has several provisions and we have focused only on the consultative portion, but the bill also has a section 6 which we think is highly important.

If we get an on-site consultation program going and we find the demand for consultation is nearly nil, well, we can adjust to that easily because we certainly need more general education seminars and work with trade association groups on problems and questions in the field.

If we find, on the other hand, the demand for consultation is great, we will at least have a program started on this.

Furthermore, as I said, approximately a third of the working force is not covered by any State plans, not by any State programs.

Mr. GAYDOS. Right.

Let me correct that because you said that once before.

A third of the working force is not covered by consulting service because everybody is covered under the act.

Mr. MINTZ. No, no; I assumed we were talking about a particular program.

Mr. GAYDOS. Consulting service.

Mr. MINTZ. Yes; I assumed that was understood.

Mr. GAYDOS. Am I illogical or is it improper for me to conclude or presume or reason, or whatever term you want to use—why not let a good thing that is working work for a while? Why not come back a year from now?

You have no experience rating. You yourself admitted to this committee you have nothing whatever to base your position on because you have no experience as far as consulting experience per se and you are not familiar, and this is not critical; you are not familiar with the insurance company as to how many people they have, as to what their experience is, and who is taking advantage of their consulting services free, the people they will insure where they contact by telephone, by mail, and personal representative: "Please come and take advantage of our consulting service."

And I have the record, and it is in the record before the committee; they say—and I will let you have this information because you might want to check it, they say, their conclusion was a very bad response and, No. 1, those that should have responded did not, and those that should not have responded did respond.

That is their experience today. The point I am making is, I think you are premature, you ought to let us get a little more experience.

Mr. MINTZ. Well, the experience of Liberty Mutual, as I recall from the oversight hearings, shows they were doing 60,000 consultative visits a year. Somebody must be asking for those.

Mr. GAYDOS. That is a drop in the bucket according to statistics and we have the statistics here.

We are not talking about—well, counsel advises me we are not talking about the ones they made themselves to protect their own backside because they are in the business and they handle around 9 percent, I believe, of the insurance services for workmen's compensation, but we are talking about the availability of consultative services on a voluntary basis, not their inspections, you see.

We are going to have the same thing, either we are wrong, or I am wrong in my supposition, the position I take, that we should let this act alone for the time being, either I am wrong or you are right. Let me ask you some questions:

Mr. MINTZ. Could I respond to that?

Mr. GAYDOS. Sure.

Mr. MINTZ. We have been hearing for several years, in just talking to the few of you with whom I have been able to talk on the Hill so far about the businessmen that come in to see you and letters you get, that the message you are setting is that there should be consultative service. There appears to be high demand for that.

I don't know, however, exactly how strong or widespread that demand is. Nor do I know precisely how many of the people writing in really want consulting services.

I don't know these things, nor do I know of any way we can find out even on the State plan aspect of the matter.

Mr. GAYDOS. Why, then, are you requesting that you take under your Department, contrary to the argument as a matter of record in the last appropriation bill, why are you supporting a proposition where you want on-site consulting services in conjunction with compliance activities?

Why are you anxious to get that jurisdiction? Isn't it working now?

Mr. MINTZ. For example, if we set up this program and we do not receive a good amount of requests for consultation, and therefore do not have to assign people to conduct the consultation, we still shall have plenty for them to do under this integrated program we are talking about. But we will learn a lot from the entire program, and maybe there will not be a particular aspect of the program that needs to be filled.

Mr. DANIELS. Will the gentleman yield?

Mr. GAYDOS. Yes.

Mr. DANIELS. Do you want the Chair to answer that question?

Mr. GAYDOS. Sure; the Chair is always enlightening, and I am willing to listen to the Chair.

Mr. DANIELS. First of all, I do not think you presented a true factual question.

If you recall the debate when the appropriation bill for HEW–DOL came to the floor, the manager of that bill on the floor, an esteemed colleague of yours from the State of Pennsylvania, said that this $5 million appropriation was being made because of the need for such consultative services.

However, he added that this was not a function of the Appropriations Committee, that the appropriate legislative committee should take the necessary action, and that was the reason for the introduction of this bill.

Mr. GAYDOS. Well, Mr. Chairman, you know, I have the most sincere respect for you, and I know you are most sincere in introducing this legislation because you do it in great conscience, and I have no quarrel with you.

But the fact still remains that we have attached to this language in the last appropriation bill; in fact, we are getting it reappropriated; and I think the second $5 million is in the offing; is it, or isn't it, and we have not used the first yet?

Mr. DANIELS. That is not true.

Mr. GAYDOS. I stand corrected, and I would like to be informed by the chairman on that point.

Mr. DANIELS. That is not true.

However, you must visualize this situation: If no legislation is enacted in this area, and the same question should arise next year before the Appropriations Committee where a demand is made for an appropriation to continue onsite consultation, can you or any other Member of the House give a guarantee that the Appropriations Committee will come forward with $5 million for on-site consultation for fiscal year 1977?

Mr. GAYDOS. I may respond to my chairman that this is the very point I am trying to make.

We at least will have a track record, we will have experience; we will know how many people availed themselves of that service, and then we will be able to argue before that Appropriations Committee and before this committee and on the floor of the House, saying, "This is what we experienced and this is the need for services and this is the number of on-site inspectors' services we must provide, this is the percentage of all of those that requested it, and here is how many requests we had."

Now, I don't want to delay, but I think we are so premature in considering this legislation, and I think we have not given ourselves a fair amount of time to take a look at what we are doing.

Let me ask you some questions, if I may.

If Mr. Daniels' bill were enacted into law, how would you attack the provisions we are talking about, particularly, again, the on-site consultation services?

In particular, let me ask you: Do you think you would be able to staff that part of your operation or that department or subdepartment with sufficiently trained personnel within 1 year or 2 years or 3 years?

What is your opinion or feeling at this time?

Granted you don't have any experience upon which to base your conclusions because you don't at this point, I don't think.

Mr. MINTZ. We do have some experience. We know what it takes, for example, to train an inspector. Although a consultant may have a different personality or skills, we can gage what is needed to train consultants which we have learned from training our inspectors; and we know how long it takes to train them.

Mr. GAYDOS. May I interrupt you there?

Mr. MINTZ. Surely.

Mr. GAYDOS. You have 170 openings in your inspection force right now, pursuant to the testimony before Mr. Flood, 170 jobs not filled. You have been in business 4 years or 5 years?

Mr. MINTZ. Because of turnover, we are generally going to find there will always seem to be some vacancies in these positions.

Mr. GAYDOS. That brings me some doubts.

Mr. MINTZ. I am speaking about a general 10 percent.

Mr. GAYDOS. Twenty States that are working, or 20 out of 22? Whatever it is—20, or the 15 that have applied they are doing the job, and again, you have in your field openings in your compliance inspectors. And now you want additional authority, and that is, well, to set up this department and go into on-site consulting services, and where will you get the people?

Let me ask you one practical question: Where would you look to hire the first 100? Where would you go, which university, or would you go to the States that have theirs working? The insurance company?

Where would you get the people?

Mr. MINTZ. Those are the general sources; that is, young people graduating from school, and unfortunately, the unemployment rate is fairly high now, so there is no inability to find qualified people in this regard.

Our main difficulty is simply one of timing because of civil service procedures and setting up a program for training.

Mr. GADYOS. If I were a State's righter, and I believe in States having some participation in this Government regardless of whether the Government people stuck their noses in or not—let's presume I am a State's righter, and won't I be on more solid ground in stating: "Look, we are doing this and we have, for instance like New York, where they pulled out of the program, and wisely so, and I predict it is going to happen to all of them in it now."

Mr. MINTZ. That is why we need a Federal program.

Mr. GAYDOS. Pardon?

Mr. MINTZ. That is why we need a Federal program, to take care of the contingency of States dropping their section 18 participation, plus the States that don't have plans under section 18.

Mr. GAYDOS. I have no quarrel with that, those States that do not put a program into effect, I think it is our obligation under existing law to go ahead and do it.

But we are not talking about that and that same reason does not apply to those States who set up consulting services and they are available and now you want to strip them for all practical purposes because of the 50-50 participation requirement, and your intrusion into again welding together the compliance officer responsibility along with the on-site consultative services.

That is the problem, as I see it.

Mr. MINTZ. We are not welding them together. On the contrary, we asked there be a rigid separation between the consultative service and the enforcement effort.

Mr. GAYDOS. They are still in the same Department—Department of Labor; isn't that the same Department?

Mr. MINTZ. They will pass in the halls, that is right.

Mr. GAYDOS. Can't they grab you out of your capacity and give you a supervisory assignment in another subdepartment in the Department of Labor; can't they do it tomorrow?

Mr. MINTZ. Yes.

Mr. GAYDOS. Under civil service, they can do it to you?

Mr. MINTZ. In fact, it might even be healthy to have some sort of rotation of compliance people and inspectors, but that is a matter of opinion.

Mr. GAYDOS. A lot of our old arguments and debates we had in keeping them separate falls by the wayside.

Mr. MINTZ. No; definitely not. They will be performing quite different functions. However, individually, from time to time it might be helpful for them to have spent some time during their career stint in inspection work and sometimes in consultation work. But we can leave that to a later decision. However, while an employee is operating in one of the two functions there should be a rigid separation from the other type of work.

Mr. GAYDOS. What you just said is this: You said you are going to make a compliance officer also be an on-site consulting officer; that is what you say?

Mr. MINTZ. No. No, that is not what I said.

Mr. GAYDOS. I am sorry.

Did you say that or didn't you?

Mr. MINTZ. I didn't say it.

Mr. GAYDOS. Oh. All right, let me ask you, then: How many consultants, and you are looking at this legislation—you have to have some thinking on it and some projections—so how many consultants do you think you need?

Mr. MINTZ. It is not possible to give an overall total. As we said, it is difficult to predict the demand for it.

Mr. GAYDOS. How many would you—I know——

Mr. MINTZ. If the bill were to be enacted, our plans initially would provide for approximately 40 to 60 consultants the first year.

Mr. GAYDOS. To take care of what?

Mr. MINTZ. Consulting rather than educating people, the first year.

Mr. GAYDOS. To take care of which States, for a matter of clarity?

Mr. MINTZ. I am sure emphasis would be on States that did not already have plans, so it would be principally on the 20 States I mentioned earlier.

Mr. GAYDOS. Does it necessarily follow that your on-site consulting officers would also have jurisdiction and be delegated to provide that service in the States that already do have state consultative services?

Mr. MINTZ. Conceivably, but it might be a poor allocation of resources. That is something we would have to be concerned about.

Mr. GAYDOS. It can happen, you can do it; this bill does not delineate those differences and you say you can or cannot?

Mr. MINTZ. That allocation would be something better left to the discretion of the Department, I agree with you.

Mr. GAYDOS. So conceivably, a situation can occur, if I may again try to extrapolate the situation I am trying to exemplify by example.

Let's take a State with an approved plan and—a small manufacturing place—asks for consulting service, and there the man comes in and he reaches some conclusions and also, you people, Department of Labor under the act.

Mr. MINTZ. Under the bill, the employer does have to request us to come in.

If he asks for both Federal and State consultants to come in, we will have this situation you mentioned.

Mr. GAYDOS. What if he does not like what the first man says, he says, "Look, I don't believe you; I want the Federal people"?

Maybe he knows somebody in the Federal Government and calls him in and an inspector has been around the area and calls him first, and the State man says, "Wait a minute, I don't like what the Federal man did, he is bad," or something to that effect.

Do you see any problem?

Mr. MINTZ. I really don't think that is a real problem.

Mr. GAYDOS. You conclude you see no real problem when you have a State on-site consultant available and a Federal on-site consultant available?

Mr. MINTZ. It is difficult to argue on the one hand, that we don't have enough resources to handle the situation if the demand increases greatly, and on the other, that we are going to duplicate services with Federal consultants stepping on the heels of the State man.

I don't see what you describe as a realistic problem.

Mr. GAYDOS. Let me ask you a practical problem:

Isn't it a natural thing to draw the conclusion you shouldn't have both? You don't have that much money. We never funded you sufficiently and God knows I wish we funded you 10 times what you had because we need them, but we don't have the money to do it now.

It is foolish to conclude that we should fund, your Department for on-site consultative service in the Federal area, and also continue to fund, it is Federal money, taxpayers' dollars, on-site consultative services from the State level.

Isn't that overlapping and erroneous to conclude we are not going to have problems with it?

Mr. MINTZ. One problem you pointed out would be dealt with: You raised the spectre of more and more States dropping out of the program. Unless we have had some kind of experience with consultation, its curriculum and procedures, we are not going to be able to handle that situation if it arises.

Mr. GAYDOS. Well, the question presents itself—should we encourage that type of activity, encourage additional States to drop out of the program because of the 50-50 requirement as distinguished and compared with a 100-percent cost burden by the Federal Government if the State withdraws?

We have two in the process of withdrawing, don't we, New York and the State of Illinois?

Well, New York, I know, is withdrawing. Something dictated that action.

Here is the problem that I see.

Mr. MINTZ. I don't believe it was just the 50-50 funding. There also were political issues, and there were general budgetary problems.

Mr. GAYDOS. We are all going to have budgetary problems and the States, more so.

Mr. MINTZ. You know the AFL-CIO is very much against there being State programs. That is important.

Mr. GAYDOS. Could you support or would the Department support, if this is fair to ask you, and I don't want to put you on the spot—would you support an amendment to Mr. Daniels' legislation to the effect that they would continue on and encourage State participation particularly and specifically State on-site consultative services with a formula of something like 90-10, that is, 90 percent Federal participation and 10 percent State?

Mr. MINTZ. Well, it has been suggested before.

We would like the opportunity to consider that and respond to you, if we could, please.

Mr. GAYDOS. My mistake in my response, I meant the State at 90-percent funding participation.

Mr. MINTZ. I understand.

Mr. GAYDOS. It was not clear.

Mr. MINTZ. I think we understood you.

Mr. GAYDOS. Let me ask you this question to see how far off base I am.

Wouldn't it be reasonable to delay and see if those 15 applicants, I don't know if they have been processed to date, or are going to be funded, I don't know, but wouldn't it be reasonable to wait and see if another 10 might come along and apply?

There is a reason why the 15 applied. Wouldn't you be putting a roadblock in the way of a possible additional 10 applying?

Mr. WILSON. The 15 States that have already signed agreements were funded out of fiscal 1975 money.

We are no longer authorized to obligate any additional 1975 money. We are in fiscal 1975.

We could not accept other States under that amendment. We would have to have money included in the fiscal 1976.

Mr. GAYDOS. My original statement is, we do have slated for you another $5 million for this next fiscal year.

Mr. WILSON. The fiscal 1976 appropriations bill has not passed yet.

Mr. GAYDOS. I think we passed it. Well, for the record, it has passed the House.

Now, it is in the process of being approved. That raises something very interesting to me. Didn't you have enough time to spend the $5 million the last fiscal year?

Mr. MINTZ. Congressman Gaydos, the $5 million was appropriated in a bill which was signed into law in December of last year. That gives us the $5 million at that late date. Thereafter, we had to promulgate regulations for implementation of the 7(c)(1) consultation agreements and the legislative history made it clear that those regulations would be promulgated only after a rulemaking proceeding with opportunity for comment and consultation with the National Advisory Committee on Occupational Safety and Health.

Many, many comments were received and analyzed. There was a lively discussion in the NACOSH Committee and final regulations were promulgated in May, last year.

Mr. GAYDOS. You mean May of this year.

Mr. MINTZ. I meant May of this calendar year which was in the last fiscal year. It was within several weeks of those regulations being promulgated in May of 1975 that the 15 States entered into the 7(1) program.

Thereafter, as promptly as we could, we made a response to the applying States to use the $5 million Congress provided.

Mr. GAYDOS. I want to be candid. I know the Department of Labor would be most active in implementing the legislation; they have always been so and maybe we differ sometimes, but we have gotten good cooperation, and I accept your explanation.

The time element, your necessary compliance with a lot of prerequisites, and that is probably why we signed the contracts a month or so ago; I understand that all right.

I want to ask this question, and again, I go back to one of my original questions: Assuming, whether this legislation passes or not, but assuming the House passed an appropriations bill which is pending approval in the other body, and assuming additional funds are available, would there be any activity on your part to make an attempt to encourage more States to apply because you would have funding and wouldn't it be possible, if your encouragement proved effective, you may end up with almost all of the remaining States applying and having everybody covered?

Mr. MINTZ. We would welcome such interest by the States if we had additional funds. The existing regulations would apply to those States and we would have an elaborate and extensive 7(c)(1) State consultation program if the State applied.

Mr. GAYDOS. That wouldn't be too bad of a program; would it?

Mr. MINTZ. We have indicated we would continue the 7(c)(1) State program.

Mr. GAYDOS. All right.

Mr. WILSON. We worked very hard in May and June of this year to talk all of those States that do not have consultation programs into participating and only 15 chose to participate.

Mr. GAYDOS. But we know that those 15—because it is a 50-50 proposition, we know that those 15 have stretched their money out to make it comparable to 30; haven't they, which you would have to be servicing and if they pay 50 percent of the costs your money is going further, isn't it? That is logic.

Mr. MINTZ. Yes. I can't argue with that.

Mr. GAYDOS. Again, I come back to my original question I raised: Why all of the haste? Why all of the haste when you don't have a track record yet?

Why all of this haste to dispose of all, which you practically will do, dispose of all of the positive things that were accomplished and are now being accomplished under a program which was very hotly debated in the House and which was concluded in the argumentation and debate that the services should be separate?

That is what I can't understand.

Mr. MINTZ. Congressman, I want to clarify a point. We do not intend to dispose of the State program either under 18(b) or under 7(c)(1). Those programs would continue.

Insofar as haste is concerned with respect to the Federal consultation program, the bill introduced by the chairman provides that consultation without sanctions may be available by Federal personnel upon a request by the employer; that is, the activity is triggered only if the demand exists.

If requests are not made, then there would be no need, of course, for us to go out and make those consultations.

It seems that would answer the question about "predicting how much demand there will be."

But whatever demand is made, we will be authorized under the bill to respond as promptly as possible to provide the consultation inspections.

In light of what is often heard on the floor of the Congress and in the public press, the effect that consultation by Federal personnel is needed, then it seems we have an obligation to have the authority that we have to make that available in order to test whether, in fact, the demand exists or to what extent it exists. As a minimum, the basic authority to respond is needed.

Mr. GAYDOS. As a practical matter, what is going to happen to those 15 States who have applied and who have acquiesced to your encouragement, who have now indicated to you through an agreement you executed with them that they want to carry on a State consulting service or including all sorts of services, but let us say State consulting. I think that is what they are limited to, and so you intend to freeze them into that position and do you expect next year to continue on in a like agreement with them?

What will you do with those 15?

Mr. MINTZ. Well, the agreements that were entered into very late—in May and June of this year.

Mr. GAYDOS. One-year agreements.

Mr. MINTZ. For those we are using the $5 million appropriated for fiscal 1975, but the agreements have been obligated through 1976.

Mr. WILSON. Those agreements run until June 30, 1976.

If money is made available during this year, those agreements for those 15 States could be renegotiated and extended for an additional year.

Also, new States could enter. Any of those 15 States may terminate their agreements. There are quite a range of possibilities as to what they can do, depending on whether we have additional money or whether the 15 choose to renew their agreements or whether new States sign agreements.

Mr. GAYDOS. Assuming the Daniels bill passes with all of its provisions, how does it affect the status of the 15 or additional ones that will follow in your estimation?

How does it affect it or does it affect it?

Mr. MINTZ. The contracts would continue and it would not affect their status.

The funds are available and contracts are made and the personnel are on board and the States could and hopefully will continue their activities.

Mr. GAYDOS. All right, now it is suggested that they may drop out or if they don't drop out and assuming they don't drop out, do you expect to keep the 15 States active along with the other 20 States that have consulting services; do you expect them to remain active with a 50 percent participating requirement as far as funding is concerned?

Mr. MINTZ. Well, as we pointed out, we cannot say for certain that the 15 States with 7(c)(1) agreements will continue with those agreements. There is a distinct possibility that they will, however.

As you know, under section 18(b), we provide 50 percent support for approved State plans even though the Federal Government could perform that activity at 100 percent.

There are 20 States that want to carry on a full State program with a 50-percent Federal support.

By analogy, we may expect and anticipate that some States will be willing and anxious to carry on the consultation activity at 50 percent even though it may otherwise be available at 100 percent.

Mr. GAYDOS. Do you really believe they will want to carry it on when you provide from a Federal level consulting services at your own cost?

Do you think those States will want duplicative consultants available from the State and the Federal Government and compliance officers flying somewhere between maybe the Federal Government and maybe with the states?

This is duplication.

Mr. MINTZ. I would like to clarify another point. We do not intend to have the Federal consultants active in those States that provide State consultation services. We are talking about allocation of resources, more precisely, Federal consultation resources in those 20 States in which no State activity of any kind in the consultation area is taking place.

Mr. GAYDOS. The roads to many places are paved with good intentions; however, the fact remains that just does not prove to be the situation many times because we are in an area of skepticism at best, because we don't know what is going to occur; nor does the Department know.

The point I am trying to make is this: We have a track record. We have the States that have manifested their desire to carry on States rights and to do their share even on a 50–50 participating basis, funding, that is, and we have trained personnel, we have had some experience with it, more in the offing, and 15 have just applied and they are going to be added to the 20; that is not too bad, 20 plus 15, and that adds up in my mind to 35 plus, because you have a couple of others.

Mr. MILLER. Under the OSH Act, we have 56 jurisdictions including the Virgin Islands and Puerto Rico.

Mr. GAYDOS. The way I understand it, some States don't have a need because of their activities, I don't know, but the fact is, I can't understand the turnabout, the change by the Department supporting this legislation when a short few months ago before the Appropriations Committee everything was hunky dory.

There were no problems raised. Everything was working well. I can't understand the complete turnabout.

Mr. MILLER. I am not sure the turnaround is as dramatic as you described it. Maybe things were not working that well.

Mr. GAYDOS. I yield back to Mr. Sarasin until I come up with a few more questions.

Mr. SARASIN. Thank you, Mr. Gaydos.

I listened intently to the gentleman from Pennsylvania and I thought of a lot of reasons for arguing with him except I am not sure I am not coming around to his point of view.

I am concerned about the question he raises. If we do provide for full Federal funding, the consultation, what incentive is there for the States to remain in a program to provide their own consultation when they are only getting 50-percent funding?

Is there an incentive?

Mr. MILLER. There may be an incentive. I won't try to pass on it, but several times it has been mentioned to me by State and regional people that the States are closer to individual businesses and concerns. Also, there is some sort of fear of Federal control. Thus, there may be an incentive for continuing a State program rather than bringing in the Federal Government, even if it means additional costs.

Mr. SARASIN. It may be an incentive from the point of view of the employer who would like to be able to deal with people that he may have dealt with in the past within the State labor departments, and so forth, but what incentive is there to the legislature of the State that has to find the money?

Mr. MILLER. Simply response to pressure; I am talking about the pressure from business, to the effect, if the Federal OSHA comes in, some may say, "We won't use it." Maybe this produces an incentive which may be substantial enough to justify retaining the State program.

This is what has been told to me in several places but whether it is the case or not, I can't tell you.

Mr. SARASIN. With that same thought, can you think of an incentive, or have you thought about incentives to keep the States involved in the compliance aspect of OSHA?

Mr. MILLER. This is a problem we have under study right now and we hope to have a more definitive statement by the end of this summer, within a month or so.

Mr. SARASIN. I have the feeling we are getting hung up in the small stuff here, and forgetting the goal, the goal of the act being to provide a safe workplace for all Americans.

I think that consultation is certainly a desirable way to help with that goal and we do realize we are talking essentially about voluntary compliance because we are not going to look at every worksite.

Certainly the people in my district have expressed a great desire for consultation and to have it available. I sent out a questionnaire which is now dated, probably, because it was a couple of years ago, to some 1,500 employers and labor unions in my district in Connecticut.

I did not get the kind of response that apparently Mr. Gaydos has seen in the Liberty Mutual situation.

We did find that the larger employers received a great deal of cooperation from the workmen's compensation carrier and inspections and so forth, but the smaller employers simply paid the premium and never heard from them.

So I would like to see some form of consultation available to them, and I think the Daniels bill is a good way to do it.

But I do find myself in agreement with Mr. Gaydos. I am concerned the States will simply give up and then from a very practical point of view, it means fewer consulting people in the field, ultimately fewer inspectors out in the field and perhaps we are really debating the intention of the act and I wonder if you could comment on that.

Mr. MILLER. As I said earlier, what concerned the Department, first of all, is the fact of protecting the workers. That consideration is primary.

If consultation is a means for doing that, then we support consultation.

If there are other ways to do it through more general education, through general compliance, we are in favor of those, too, in trying to meet the proper mix.

The exact way to do it is not something we have a lock on. If States want their own programs, general compliance and everything else, the mechanism is there in the bill.

Under 7(c), if the State is still interested in having a limited program not in a State program, but in consultation, we are providing that, too.

Where there is means of providing on-site consultation we would like to have the authority to close the gap. It is not a decision that we are making at the Labor Department. It is a decision that the States themselves are making and you are helping them make this decision.

But, generally, we are trying to be goal oriented rather than process oriented. We are hoping, in this whole question you raised of the State plans—the role, or the retention of States in the plan, or encouragement of other States to join—to have a better idea on that to present to you within a short timeframe.

Mr. GAYDOS. On the same point, will my colleague yield?

Mr. SARASIN. Yes.

Mr. GAYDOS. On that same point, am I too far off when I conclude or observe that if we do this, those 15 States which have wanted to participate at a cost of 50 percent of the funding will drop out? Aren't we going to set a bad precedent?

Particularly in this act you are never going to have another State ever want to participate?

You are going to kill that desire. The whole thought behind the 50-percent participation matter by the States was to enlarge the funds or to get the States to spend some funds along these lines and to make that $5 million turn into $10 million.

If I were one of the 15 States that have applied and now you turn around and say, "I am going to supply these services," as I see it, they must say of necessity you broke faith with them and, No. 2, "We are never going to participate with this act and you take this ball of wax, and do it yourselves," and that is after the expense of going into the programs and after going to the expense of paying 50 percent and the expense of hiring and training and promulgating their activity and engendering the good will of their business people and employees and workers in the State by saying, "Look, we want to participate and we want more money plowed into OSHA and more money plowed into the business of consulting. We have gone ahead on our own initiative and done it. Now you go and cut the legs out from under us and you are not going to get us ever to participate."

And then OSHA will perhaps have to buy the States' participation, depending on how big a carrot we hold out.

Because they will say, "Look, you broke faith and you want to go into the business of consulting and we thought you made that determination that it should be separate, the two of them, and now you are cutting our legs out from under us."

I think you are in a dangerous area, a self-defeating type of action, and I have great fear that this might disturb orderly development and enlargement of OSHA in both areas, the consultative area and the area of compliance, because the record is unmistakeable in showing you have had the program for 4 to 5 years and can't even hire the people, sufficient number of people insofar as training is concerned, putting in an effective activity, or making the act work like we thought it should. You haven't done it at the compliance end and now you take unto yourself, when you don't have to, you are taking unto yourself another segment of this whole complicated picture; that is, consulting where the States have, I think, excuse my language, been damned nice in responding as they have to date.

Now, I feel that it is just counterproductive.

I feel very bad about it myself personally. I feel very badly because I think your Department is going to experience some of these things that I am predicting are going to occur; that is, a complete pullout by every State. They are going to say, "Do it yourself, and we are not going to participate."

And, again, I will conclude, Mr. Chairman, but you are going to have the same situation which we again hotly debated on the floor—compliance and consultation should not be in the same Department.

Mr. SARASIN. Will you yield?

Mr. GAYDOS. I am sorry.

Mr. DANIELS. You still have time.

Mr. SARASIN. I certainly don't agree with the gentleman from Pennsylvania that the compliance and consultation cannot be in the same department.

In fact, I think it is probably desirable to have them in the same department. People can still operate in different modes. We have to do it every day of the week when we try to evaluate different pieces of legislation, and I think we can be objective on that basis. So can an inspector if it is his job or if he is a consultant any particular moment, he can be a consultant. I don't think we should mistrust everybody, which seems to be the vogue today.

But I am concerned with one point the gentleman makes; Will the States get out of this business?

I would hope there would be some answers to that.

Obviously, there is pressure today for someone to provide consultation.

Mr. Gaydos. Mr. Sarasin, if you yield to me for a second, I think you and I both shared at that time the tremendous pressure on all of us, particularly from the business people who took that position, "They didn't want consulting services, mixed up with compliance."

They were eternally fearful. Unequivocally, they stated themselves opposed and the Chamber and other witnesses opposed it, and now all of a sudden, everything is all right to go ahead and merge them, and none of the problems we saw before and none of the objections we put on the record before are now valid.

Mr. Miller. Maybe now we ought to change the law because we have States now doing consultation and compliance and if it is not meant they should do both, perhaps there should be an amendment.

Mr. Sarasin. What is the record on that?

Mr. Miller. About one-third of the States are now doing both consultation and compliance.

Mr. Daniels. Will you yield?

Mr. Sarasin. Yes.

Mr. Daniels. If I may respond to both of my distinguished colleagues sitting with me here today, I think you have apples and oranges all mixed up here.

There are 22 States which currently have approved section 18 plans and, of these States, 20 offer on-site consultations.

One State, Iowa, is planning this service and another State, Utah, has chosen not to offer consultation.

I assume that if this legislation is passed, that the Department will require the State of Iowa to come up with a plan which will provide for on-site consultation.

Now, however, it has been mentioned time and time again, by my distinguished colleague from Pennsylvania, Mr. Gaydos, and I want to compliment him, he has shown he is a very, very good lawyer by the questions he has asked here today. But in response to his concern about these States dropping out, no one can foretell or anticipate how many of the 20 States presently having on-site consultation will drop out.

There is an incentive for those States to continue to operate their own plans. Even in spite of the 50–50 funding and that is, the fact that they hire their own personnel in audition to the fact that some States like to be closer to their industry

So I don't fear that all 20 States or 22 States presently in the plan are going to drop out

Now, getting to the other side of the coin with respect to the 15 States who are authorized under the recent appropriations bill to participate in the plan whereby we provide 50–50 funding.

They are getting that presently under the 1975 Appropriations Act. The appropriation of $5 million that we authorized recently applies for fiscal year 1976 and that has not been enacted into law as yet. But with respect to those States, likewise, they hire their own personnel.

Now, the question that my distinguished colleague Mr. Gaydos, propounded, assumed that the legislation under consideration is enacted into law.

This legislation may not be enacted into law; so I will present a hypothetical question to you:

If this legislation is not enacted into law, and if no appropriation next year is made by the Appropriations Committee, whether it be $5 million or $10 million, if such appropriation, or if no funds rather are appropriated next year, what will be the status of the legislation with respect to on-site consultation?

There will be none. It will only take place in those States that have approved plans under section 18(b); is that not true?

Mr. GAYDOS. Are you asking me?

Mr. DANIELS. I am asking anyone in the room who cares to respond.

Mr. WILSON. That is correct.

Mr. GAYDOS. That is correct.

Mr. DANIELS. So, therefore, if we don't have this legislation and if the Appropriations Committee next year fails to come up with an appropriation for HEW-DOL, then there will be no on-site consultation services provided to any State except those States that have approved plan under 18(b); is that statement correct?

Mr. MILLER. That is correct. It might be helpful for the committee to know the magnitude of the problem.

For example, States not having consultation right now, if my figures are up to date, include Pennsylvania and New Jersey, no consultation whatsoever. There is not the problem of the State inspector or a Federal inspector meshing gears but there absolutely is no one doing consultation at all in those two States right now.

If the 7(c)(1) plan funding were not continued, States such as Massachusetts and New York—and I have a full list if you are interested—would also have no consultation whatsoever.

There are 15 in that list, and I think 19 or 20 in this other.

Mr. GAYDOS. If the chairman will yield, let me ask you a question: You don't have a track record on the 15 you just signed agreement with. You don't know how that is going to work, the consultative services alone, period. You don't know, do you?

Mr. MILLER. What we find out on the record? We know the amount of demand and the sizes of businesses and what types of business were asking for it.

Mr. GAYDOS. You know the type of demand. What were you going to do with 40 or 50 on-site consultants or engineers or experts, whatever you want to call them, as was admitted in the testimony before Mr. Flood recently you were talking about 40 or 50 men in 50 States and territories practically, and what will you do with that small miniscule force; what will you do with it?

Now, in one State you have more than that.

Mr. MILLER. First of all, that is the first year figure; and second, we are not going to try to put them in all of the States.

As you said, we are not going to try to intrude on the States that provide their own consultation.

Mr. GAYDOS. The funding has to occur.

Mr. MILLER. That is right, but we hope that funding will occur and we roll up that many more inspectors.

Mr. GAYDOS. I heard it mentioned that those States that are now providing enforcement procedures and others, because of an approved plan, other things under the act, all of the complete things required under the act, plus on-site consulting service, those States are doing two things——

Mr. MILLER. Many more than two.

Mr. GAYDOS. Many more, but the two things we are talking about, enforcement plus consulting, what do you think about them; is it working or not working?

Mr. MILLER. In terms of State plans, that determination will be made this year. I don't want to prejudge that for those 18(b) States. That judgment is provided for a statute.

Mr. GAYDOS. Don't you think, and again, we are getting back to what I have been advocating, wait a little but to find out? I don't know how it will work, and I don't pretend to even be clairvoyant, and I don't think you are either in your official capacity, nor in the Department generally, but I have been, I think, emphasizing that we are premature with this action, we ought to wait to see what happens in the 15 States that are just going to provide consulting services, a partial service, and what kind of record we will have with the States, because they might be in trouble, too, when they make attempts to provide consulting services along with other enforcement aspects of the act and the other two or three that are flipping around in no man's land.

Mr. MILLER. I don't know how essential the track record is. Also, this bill does two things, not one.

If you want to make a distinction between consultation on-site and education generally, we happen to feel that, in general, the education process aimed at groups of people, groups of businessmen for example, may be much more cost effective, but there will be need for both efforts.

As to the element of exactness, we don't know right now. But if we find the demand is tremendous, first of all, you will hear about it; and second of all, we will assign priorities so we can go to areas and take care of the needs. It would be a shame to let those needs be put off a year or two or three more.

On the other hand, if there is not a great demand for on-site consultation, our staff is not adequate right now to deal with the general education and training in seminars, and the resources provided by H.R. 8618 would be used for this effort.

The time will not go to waste one way or the other. We will fill a need. The only question is, which need?

Mr. GAYDOS. As pointed out, you have that ability under the present act to provide educational services and facilities and to educate; you have that right, right now?

Mr. MILLER. We have a small staff of people who do both training and some education.

Mr. GAYDOS. Well, after 4 years, you have had the right to do it and authority to do it, statutory law, and you have it in mind to do it and you have not done it.

What do you expect in this other field if all of this time you have not done that, what do you expect if we give you this obligation to fulfill, you know?

I asked the question before: what we are going to do with 40 or 50 people, but when are we going to have a full complement in your opinion, if you can't project, and I don't think you can probably because we don't even know what it will be.

Mr. Miller. I think it is like flying saucers. I think if there will be more need, we can always justify more, and more we are trying to be responsive on this.

Mr. Gaydos. I won't intrude, but in suggesting that opinion of yours, I cite this one fact: We have relied upon the same type of doubletalk before, and we are talking about the compliance officers, and still, 4 years later, we have 170 slots you have not filled, and the only excuse you advance is that: "We can't find qualified men."

Now, 4 or 5 years of waiting to find qualified men, and you have not utilized your educational rights under the act, you can't find qualified men 4 years later, 170 openings; something is amiss.

No. 1, you don't have facilities to prepare the men properly; or No. 2, there is no desire to put the sufficient number of compliance officers into active service. Somebody is dragging their feet.

Mr. Miller. It is much more simple than that. My facts might not be accurate, but it should be in the ball park. We had approximately 800 compliance officers.

Mr. Daniels. You had 1,100, according to testimony.

Mr. Miller. No, no. Wait a minute, please.

We had around 800. We felt this was insufficient, and we asked for several hundred more, and we got them and there is still controversies over how much will be support and how much other.

I am informed it is about for 590 more and this was only recently granted us. We are trying to staff those up now.

It does not happen instantaneously; you are right, but we feel there is a need for that many.

Mr. Gaydos. Four years, five years, to determine this, your findings and your action, when they can't stand up under scrutiny as to reasonableness, there is so much delay.

There might be more reasons for it.

Mr. Miller. When we jump from where we have 800 people in compliance to adding 500 more last December, wasn't it?

Mr. Wilson. We received positions authorized out of the appropriations bill passed last December. That gave us about 300 more.

We have reprogramed State grant money to add about another two.

Mr. Gaydos. So the record is accurate, actually. It was 341 total jobs and 300 inspectors, is that right?

Mr. Miller. Yes.

Mr. Gaydos. Let me conclude and I know, well, I appreciate my chairman's patience with me, but I must make these points. I don't take too much time in most meetings we have, or hearings, but if, to date, after 4 to 5 years of activity, we have expectation, reasonable statistical expectation of an on-site inspection once every 100 years, depending upon the personnel, what can we expect, if you take over these obligations, as I presume is going to occur, and the States are going to pull out; what can we expect as far as consultative services and as to the response of your Department as to number of employees that will be capable of providing these services?

Mr. Miller. I joined the agency a month ago and I ceased reacting a little over a week ago, so I know you are not reflecting on me.

Mr. Daniels. Have you concluded?

Mr. Gaydos. Concluding, Mr. Chairman, I think it is a proper question, you raised the specter, and I think properly so, talking about

$5 million not being appropriated next year, that possibility, how can we rely upon the money you have in the legislation to be appropriated also, both for the same purpose?

Mr. DANIELS. Well, you failed to realize the point that I raised. The Appropriations Committee said: It was not their function to take over legislative duties. They expected, or there was an excuse last year, as counsel for the Department has pointed out in the testimony here today, it was because of the lateness of the promulgation of the regulations, not until May of this year, that there was not sufficient opportunity for those 28 jurisdictions to apply for the funds, and only 15 jurisdictions applied.

It was specifically stated on the floor by your distinguished colleague from Pennsylvania who managed the bill for the Appropriations Committee that this was not a duty or responsibility of the Appropriations Committee.

It should be handled by the appropriate legislative committee having jurisdiction which is this committee.

So, therefore, I point out that if this legislation is not enacted, providing for on-site consultation, and if next year, no appropriation is made, you are going to have may States which will not be able to provide this service.

That is the reason why there is a need for this legislation.

However, we could argue this point time and time again and have gone uphill and downhill several times already today.

With respect to the 500 slots that are open for inspectors and consultants, I might say that with national unemployment hovering at 8.6 percent with approximately 8 million or more people out of work, I don't think the Department of Labor will have any difficulty in requesting applicants for jobs and I think there are many qualified persons who are knowledgeable and have sufficient expertise to be trained for this job with very little difficulty, can be put on board in a short period of time.

I am going to ask unanimous consent that any member of the committee that has any questions on the legislation, that they may be permitted to submit those questions in writing to the Department and the Department respond in writing and that they be incorporated in the record of this proceeding immediately following the testimony of all of the witnesses here today.

Is there objection to that unanimous consent request?

Hearing none, it is so ordered.

The hearing today will adjourn and we will meet on Thursday, July 31, and the room will be announced later and I would like to mention that at that time the witnesses will be representatives of labor organizations who will be testifying.

[Whereupon, at 12:45 p.m., the subcommittee adjourned, to reconvene on Thursday, July 31, 1975.]

[Material submitted for inclusion in the record follows:]

U.S. DEPARTMENT OF LABOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
Washington, D.C., September 11, 1975.

Hon. DOMINICK V. DANIELS,
Subcommittee on Manpower, Compensation, and Health and Safety, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR CHAIRMAN DANIELS: In answer to your letter of July 28, 1975, I am enclosing the responses to the questions you raised on the issue of on-site consultation for the record of the proceedings on H.R. 8618 by the Subcommittee on Manpower, Compensation, and Health and Safety.

In addition to your questions, I would like to expand here on my remarks made at the hearing on the issue of compliance staff recruitment. Congressman Gaydos raised this issue when he referred to information on what he considered to be a relatively high rate of vacancies among the field compliance staff.

As you know, the Fiscal Year 1975 appropriation bill for the Occupational Safety and Health Administration (OSHA) contained authorization to hire an additional 341 personnel (300 compliance officers). The bill was enacted on December 7, 1974. Since that time, OSHA has filled all of these newly created positions. In a subsequent reprogramming action necessitated by the withdrawal of State 18(b) operations in New York, New Jersey, and Illinois, another 300 Federal OSHA positions were authorized. OSHA immediately initiated another recruiting drive, and as of July 31, 1975, we had hired 123 of the 300 authorized positions bringing our field compliance staff to 1,173.

On June 19, 1975, the House voted to reduce OSHA's Fiscal Year 1976 appropriation request to eliminate annualization costs for the 300 new positions which had been authorized in June 1974. The Appropriations Subcommittee report indicated a belief that OSHA would not be able to quickly recruit and hire the additional staff. This action by the House is now being appealed. Until this matter is resolved, however, we cannot act on the current vacancy situation with any degree of certainity. This is unfortunate, since our recent recruiting drives have been successful in attracting college graduates and experienced safety and health professionals, unemployed as a result of the general economic situation.

Also enclosed is a corrected copy of my testimony given before the Subcommittee on July 24, 1975. The text has been checked for both content and errors and all corrections are clearly indicated.

I wish to thank you for permitting me to appear before the Subcommittee to discuss H.R. 8618 amending the Occupational Safety and Health Act of 1970 to provide on-site consultation by Federal personnel. I hope the information I have provided will be helpful to you. Should you need further information, please contact me.

Sincerely,

MARSHALL LEE MILLER,
Deputy Assistant Secretary.

Enclosures.

QUESTIONS ON H.R. 8618, CONSULTATION AND EDUCATION TO EMPLOYERS

Question. If an OSHA consultant determines that an employer could be assisted in health hazard recognition and elimination by NIOSH, would the OSHA consultant call in NIOSH? Would the consultant discuss this with the employer prior to contact with NIOSH?

Answer. Yes, we would call upon NIOSH for consultative assistance in cases where their expertise could be useful in helping the employer eliminate or reduce the effects of health hazards. In addition, should an employer requesting consultation appear to be faced with a particularly complex variety of health hazards, OSHA would encourage the utilization of a NIOSH survey for health hazard recognition and elimination.

Question. Do you anticipate coordinating your educational efforts with NIOSH? Will you ask NIOSH to assist in education and training in local communities? Can you give this Subcommittee an example of how you might coordinate an educational program concerning hazards in particular industries with NIOSH?

Answer. In accordance with section 21 of the Act, both OSHA and NIOSH are involved in training and education programs, but focus efforts in different areas. OSHA handles in-house training of its safety and health professionals, as well as educational programs for employees and employers in their local communities. NIOSH, on the other hand, develops and institutes long range education programs for those wishing to become safety and health career professionals, both in government and private industry, and develops informational programs on the proper use of adequate safety and health equipment.

This demarcation of responsibilities was spelled out in a bilateral agreement between the two agencies signed in October of 1973 (copy enclosed).

On projects of mutual interest, the two agencies have coordinated their efforts in the past and will continue to do so when appropriate. For example, OSHA has provided advice to NIOSH in setting priorities for its Health and Safety Guides for OSHA standards. NIOSH and OSHA are also currently cooperating on the development of correspondence courses on the fundamentals of occupational safety and health. These will be made available to colleges and universities for aspiring safety and health professionals.

Question. What is your view of a suggestion proposed by the National Society of Professional Engineers that Congress allow the appropriation to be used for grants to local chapters of safety-oriented organizations to provide some "community or public" service? The Engineers believe that in this manner Congress could obtain not only quantity but also experienced people to assist in consultation.

Answer. Should the consultation amendment be enacted, OSHA will be looking at a variety of individuals and groups as potential resources to assist in the consultation program. If the Professional Engineers have the needed expertise available, they will definitely be considered in this context. However, because of the need for uniformity of technical interpretations, all safety and health professionals providing consultation under the Federal program will need to be closely supervised, be they Federal staff or private individuals working under contracts.

ON-SITE CONSULTATION HEARINGS, OCCUPATIONAL SAFETY AND HEALTH ACT

THURSDAY, JULY 31, 1975

House of Representatives,
Subcommittee on Manpower,
Compensation, and Health and Safety of the
Committee on Education and Labor,
Washington D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2175, Rayburn House Office Building, Washington, D.C., Hon. Dominick V. Daniels (chairman of the subcommittee) presiding.

Members present: Representatives Daniels, Dent, Gaydos, Lehman, Risenhoover, Beard, and Quie.

Staff present: Sue Nelson, legislative associate; Denniese Medlin, clerk; Saralee Schwartz, research assistant, and Edith Baum, minority labor counsel.

Mr. Daniels. The Subcommittee on Manpower, Compensation and Health and Safety will come to order.

Today we continue with our fourth day of hearings on H.R. 8618 and related bills, which bills propose to amend the Occupational Health and Safety Act to provide consultative services to employers desiring to comply with OSPA standards.

At this time this bill is cosponsored by 23 of my colleagues but, more important, other legislation was introduced earlier this year by my colleague, Mr. Litton, which would provide the same on-site consultation, except that jurisdiction to conduct such consultation would be handled by the Small Business Administration. Mr. Litton's bill is cosponsored by approximately 75 of my colleagues.

In addition, Congressman Findley introduced a bill which would provide more or less the same services and his legislation is cosponsored by 25 to 30 colleagues.

I mention these facts to indicate the great interest in this subject matter. I propose to conclude these hearings today.

We have listed to testify representatives of labor and our first witness is Mr. F. Howard McGuigan, legislative representative of the American Federation of Labor and Congress of Industrial Organizations.

STATEMENT OF F. HOWARD McGUIGAN, LEGISLATION REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY GEORGE H. R. TAYLOR, EXECUTIVE SECRETARY OF THE AFL-CIO STANDING COMMITTEE ON SAFETY AND HEALTH

Mr. Daniels. If I may say before we proceed, in view of the fact that we are working under great pressure here these days, and have been for the past 3 weeks, I am sure everybody is aware the House meets at 10 instead of the usual time at 12 noon. These hearings will be interrupted by quorum calls as well as votes so, therefore, I am going to impose the 5-minute rule on my colleagues. If time permits, we will go back and renew the questioning.

You may proceed.

Mr. McGuigan. Mr. Chairman, our statement is relatively brief so I will read it.

On behalf of the American Federation of Labor and Congress of Industrial Organizations, I appreciate this opportunity to present the views of the AFL-CIO with respect to H.R. 8618, H.R. 8334, and H.R. 3258.

I am accompanied by Mr. George H. R. Taylor, executive secretary of the AFL-CIO Standing Committee on Safety and Health.

I know this bill is entitled H.R. 8618 but a typographical error was made in the statement.

Mr. Daniels. I will ask unanimous consent wherever H.R. 8816 appears, it will be corrected to H.R. 8618.

Hearing no objection, it is so ordered.

Mr. McGuigan. These bills would amend the Occupational Safety and Health Act to make on-site consultative services available to covered employers on request for the purpose of encouraging voluntary compliance.

The AFL-CIO has not opposed the use of on-site consultative services as one means of encouraging compliance with the act. The original drive behind this program was, however, to substitute consultation for first instance citations, and, at a time of budgetary stringencies, to further weaken compliance efforts by siphoning off scarce money and manpower into consultation.

This is the reason why we have consistently stated that there must be a rigid separation between inspection and consultation personnel, that funding be separate, and that in no way should consultation be construed as a substitute for enforcement, or even as the best method for helping employers who wish to comply with the act. We are pleased that Representative Daniel's bill, H.R. 8618, does fully contain these restrictions.

While we have no quarrel with the goals of H.R. 8618, it raises a number of questions. Some of these have already been asked by other witnesses.

Presently, there are two on-going programs of on-site consultation. The first of these has been in operation among 20 of the 22 States with section 18 plans approved and in operation. These are funded under section 23(g) of the act on a 50-50 basis by the Secretary.

The second such program was enacted by the Congress by means of an amendment by Representative Steiger to the Department of Labor-HEW appropriations bill for fiscal year 1975. The Steiger amendment appropriated $5 million to provide on-site consultation programs by contract with preempted States entering into contracts with the Secretary under section 7(c)(1) of the act. This program was begun in May by the Secretary under 50-50 funding, with 15 preempted States presently participating with about $3 million entailed.

The House of Representatives, in passing the Labor-HEW appropriations bill for fiscal year 1976, has continued this program at the $5 million level.

As we see it, H.R. 8618 would amend the act to establish what would be a third program for furnishing on-site consultative services. It authorizes the Secretary of Labor to send his own consultative representative to any employer requesting such services. Such a visit could be made in a section 18 State operating its own consultative program, in a preempted State presently under the Steiger amendment, and in a preempted State not under the Steiger amendment.

States with section 18 plans in operation would continue to have their on-site consultative programs financed on a 50-50 basis by the Secretary, as would preempted States under section 7(c)(1) contracts now in force with the Secretary, as provided by the Steiger amendment.

On the other hand, employers in any preempted State would be able to have consultative services furnished them by OSHA personnel totally financed by Federal funds.

1. Is H.R. 8618 intended totally to supersede the Section 18 and the Steiger amendment consultative programs?

2. If so, there appears to have been insufficient thought given to the problems that could arise in the section 18 States—with the Federal consultative personnel operating on the same side of the street as their State counterparts; even if employer requests for federal OSHA consultants would be referred to the section 18 State for action.

3. Would H.R. 8618 terminate the section 7(c)(1) contractual arrangement now operating in 15 preempted States and in the process of being funded by the Congress for fiscal year 1976, or could the Secretary continue and expand the section 7(c)(1) program if other preempted States wish to participate?

4. Would H.R. 8618 require the Secretary to provide consultative services to the other preempted States with OSHA personnel fully funded by the Labor Department, while the 15 States with section 7(c)(1) contracts would receive only 50 cents on the dollar?

It is obvious that the ambiguities in this bill would result in decisions being made by the Secretary as to the manner of implementation.

Such decisions could very well result in:

One. No change among the section 18 States with their own consultative programs presently financed on a 50-to-50 basis.

Two. Retain and renew the section 7(c)(1) contracts presently in force among 15 preempted States, for which congressional funding appears a matter of course for fiscal year 1976.

Three. Concentrate OSHA consultative service among the preempted States which are not interested in a section 7(c)(1) contract for on-site consultative services.

In sum, H.R. 8618, from the standpoint of its implementation, is legislation of limited application, only to those States which are preempted and lacking a section 7(c)(1) contract with the Secretary to provide personnel to conduct on-site consultation under the Federal provisions of the act.

This brings us to the point of discussing with you what OSHA and NIOSH are empowered to do under the act as it exists to provide on-site consultation and other educational and training programs to assist employers, particularly small employers, to understand and comply with the provisions of the act affecting their own operations.

First of all, section 7(c)(1) of the act does not place a ceiling on Federal funding through contractual arrangements with non-Federal entities. It would require nothing more than an administrative decision to provide 100-percent Federal funding for consultative programs among the preempted States by contractual means.

Second, on-site consultation is only one of a number of ways to stimulate voluntary compliance among employers. It has long been our opinion, which we have set before this subcommittee as far back as its oversight hearings of 1972, and, I might add, put forth ever since in the Labor Department since the law was enacted, that OSHA has consistently failed to provide the kind of simple, direct information to employers, particularly the smaller businesses, that they need to understand what they must do to make their particular operation safe, healthy, and in compliance. Such failure has been a major cause of the torrent of protests, valid and invalid, that have deluged the Congress in the past several years and brought about such a feeling of hostility toward OSHA.

What we talked about was the need for OSHA to develop simple pamphlets which tell an employer who runs a laundry, a machine shop, a small construction company, a retail establishment, a service station—what OSHA standards apply to most workplaces, including his own, what standards apply particularly to his kind of business, simply explained, and how to obtain further, detailed information and assistance. We note that the Labor Department witness indicated that they are now implementing these recommendations.

Representative Steiger told this committee last week: "The original Occupational Safety and Health Act incorporated the principle of first-instance citations as the means to insure voluntary compliance with the act by employers. It is, in a sense, a disincentive for it is based on knowledge. There is a fear of Federal inspections, citations and heavy fines in the present circumstances which in large part stems from a lack of knowledge on the part of many employers and employees."

This subcommittee has already heard from the Deputy Assistant Secretary for OSHA in the matter of on-site consultation as being only one of a number of ways to assist employers seeking to comply with the act. We agree with his conclusions that "* * * on-site consultation should not be viewed as a substitute for enforcement, or even as the most effective means for assisting employers seeking to comply."

Organized labor remembers only too clearly that consultations without enforcement was the principal highway traveled by the State occupational safety and health programs before the 1970 act became law. The resultant failure of that approach is the principal reason we have OSHA today.

OSHA can and should use the means it has at hand to provide the informational, educational, and other kinds of programs needed to allay the fear that Representative Steiger mentioned—the fear of ignorance which can and already has been turned into hostility.

Third, the National Institute for Occupational Safety and Health has a program of hazards evaluation available to any employer who desires it. NIOSH has full authority to visit any workplace at the request of an employer for this kind of assistance, a service, we regret to say, that has been little used.

Fourth, under section 18, on-site consultative programs should and can continue.

Fifth, the program begun by the Congress for the preempted States by means of section 7(c)(1) contracts can be continued and expanded with 100 percent funding, if desirable, being requested each fiscal year in the OSHA budget.

On the basis of the foregoing, we have concluded that H.R. 8618 and the other bills introduced are not necessary to carry out their desirable purposes. Both OSHA and NIOSH have the means at hand which have been the subject of our discussion, to accomplish the purpose of H.R. 8618—if they do so aggressively and intelligently. It should be a major oversight purpose of your subcommittee to see that it is done.

Thank you, Mr. Chairman.

Mr. DANIELS. Thank you, Mr. McGuigan.

I will forgo questioning at the present time. I recognize the gentleman from Florida.

Mr. LEHMAN. No questions, Mr. Chairman. I just wish to thank the gentleman for his testimony.

Mr. DANIELS. I next recognize the gentleman from Pennsylvania, Mr. Gaydos.

Mr. GAYDOS. I thank the chairman. I have no specific questions of our longstanding friend. He has given excellent testimony as usual. I have not yet had time to comprehend and digest some of your meaningful dialog.

I do want to ask you for a reemphasis as to your conclusion. Do I understand you to suggest that we have meaningful oversight hearings rather than make an attempt at this time to pass successfully the suggested amendatory legislation?

Mr. MCGUIGAN. That is completely correct. We were impressed by the testimony of the Deputy Assistant Secretary of Labor. We are encouraged that we think there will be new emphasis in the Labor Department, that has been sadly lacking for the nearly 5 years since this law has been on the books, to bring about an educational program for the benefit of many employers and employees as well.

We don't think any new legislation is necessary to accomplish that.

Mr. GAYDOS. Do you feel that, if we pass H.R. 8618 some provision in existing law might be overlooked and might become inoperative, whereas if we didn't pass the pending legislation, those sections not now being enforced specifically may end up being enforced.

In other words, if you don't use something, it is understood it becomes inoperative and the legislation under existing provisions, if it is used, as I understand your statement, would accomplish what the suggested legislation is attempting to cure, is that correct?

Mr. MCGUIGAN. We think that is entirely correct, Mr. Gaydos. We take note in our testimony, as you have observed, that it wasn't until May of this year that the regulations were promulgated by the Labor Department for the use of the money made available through the Labor-HEW appropriations. Fifteen jurisdictions moved quickly to use that money. It takes time to get new regulations into place. This really hasn't had an opportunity to work yet and we think it should have an opportunity to work and we believe it will work. We believe this is an appropriate role for the States.

Mr. GAYDOS. There is some feeling of the prior witnesses that, if this legislation is passed, this amendatory legislation, that possibly the sums which might have been more effectively used under existing law might be diverted and instead of this new legislation being helpful, it might be detrimental. Is that what you are saying?

Mr. McGuigan. I think that is the probable outcome. There would be competition or enforcement funds and consultative funds in future budgets.

Mr. Gaydos. If I may be the devil's advocate—I have deep admiration and respect for my chairman—in the long run if this legislation is passed, would it have good results and would we be in a better position rather than not having considered it?

Mr. McGuigan. We have said that we don't think the legislation is necessary. We appreciate the concern of Chairman Daniels and other members of the committee and of the Congress. We know that Congressman Daniels doesn't come newly to this. He has been an advocate of this legislation as long as we have worked together——

Mr. Daniels. I am the original sponsor.

Mr. McGuigan [continuing]. The original sponsor of the legislation. So we don't suggest any bad motives either on the part of anyone. I think we share a mutual desire although our approaches to accomplishing certain objectives might differ, but we all want the same end result.

We believe we should give the bill an opportunity to work before considering new legislation.

Mr. Gaydos. In conclusion, I think I read you right when I say we both agree on this legislation at another time, maybe another place.

Mr. McGuigan. Yes; certainly not now.

Mr. Daniels. I recognize the gentleman from Rhode Island, Mr. Beard.

Mr. Beard. Mr. Chairman, I have a few questions I would like to direct to the Chair.

Mr. Daniels. You may proceed.

Mr. Beard. First, this legislation is designed to help the small businessman have the regulatory agents and guide him through some problems he may have. But does this legislation waiver any of the first instance violations?

Mr. Daniels. No; we do not waive a first instance violation.

Mr. Beard. So, more or less, it is an agency set up to give some advice for some of the problems.

Mr. Daniels. In the first instance the violation and issuance of a citation primarily serve the purpose of inducing voluntary compliance on the part of employers and it has worked very, very effectively, I think, up to the present time. But employers have expressed concern about the operation of this act and particularly small employers.

This legislation I have introduced is designed to help them, by giving them a preference on consultation.

Should a consultant be at the employer's place of business pursuant to the employer's request for counsel and advice and an enforcement officer walks in, there is no waiver of any violation and the employer may be cited for any violations the enforcement officer may determine.

Mr. Beard. Why would labor be against this act if it is not going to waiver the first violation? There will be no changes from that point of view.

Mr. Taylor. I think our testimony sets forth the reasons for it. It is basically that the law and the programs that have been funded by the Congress for fiscal 1975 and fiscal 1976 for providing consultative services on-site for preempted States under section 7(c)(1). This, plus the resources NIOSH has in existing legislation, provides programs, if fully implemented, under the act, without the need for further legislation. When you say that Mr. Daniels' bill—which it does—provides a bar against the softening of first instance penalties under certain circumstances, and a separation between the consultative and enforcement branches of area offices, this is very true. So does the rule which OSHA promulgated under the 7(c)(1) programs. We have that already and this is why we don't think it is necessary to have further legislation at this time which accomplishes only what is already available.

Mr. DANIELS. What do you mean by the words "at this time?" How long a period of time do you have in mind?

Mr. TAYLOR. I don't think this program has been tested, it only went into effect in May.

Mr. DANIELS. I will have an opportunity to question you so I will not interrupt any further.

Mr. BEARD. One last question. You know as a former workingman—I still consider myself a workingman—how will this affect the workingman? How is it detrimental to the workingman?

Mr. TAYLOR. I don't think we made that statement that it would be detrimental to the workingman.

Mr. BEARD. I am asking you, will it be detrimental to the workingman?

Mr. TAYLOR. I think the basic thing which might be in the long run detrimental to the workingman would be an overemphasis on consultation rather than enforcement.

Take the resources put into the consultative program: Already, according to data received from the Department of Labor, the 15 States that have come into the 7(c)(1) program are now spending at the rate of $2.9 million in matching funds, it was appropriated at $5 million but, because of the lateness of the program going into effect, only 15 States have participated, but the States with plans, 18(b) States, are already participating at about $5.8 million per year, so there is about $20.8 million already being spent by the States from their own and Federal funds on consultative services. If you relate that to the amount of money in the development of standards you will find almost twice as much money being put into consultation as being put into health standards.

What we are interested in is health standards and enforcement of those health standards. There are 100,000 workers dying every year in the plants of this country. This is where the emphasis should be. If OSHA does this with a will, there are consultative services which small businesses need and have a right to expect.

Mr. BEARD. Thank you, Mr. Chairman.

Mr. DANIELS. Mr. McGuigan, on page 2 of your statement you raise a couple of questions: Is H.R. 8618 intended to supersede the section 18 and the Steiger amendment consultative programs? Also, you ask, would H.R. 8618 terminate section 7(c)(1) contractual arrangements now operating in 15 preempted States, and in the process of being funded by Congress?

I might say to you that the legislation I have introduced, that is H.R. 8618, is not conceived as a replacement for the existing consultative programs, it only provides an additional tool in order to make sure all employers have the opportunity to receive this service.

Additionally, it will give the Department of Labor an opportunity to evaluate the merits of the different services while H.R. 8618 Federal consultants cooperate in all jurisdictions.

It is my understanding, and I believe that Marshall Miller, the Deputy Assistant Secretary, also understands this, these Federal consultants would be used in the States that need it; that is, States that do not have 18(b) perhaps or consultants. That is the answer to your question on page 2.

Mr. McGuigan. Does the bill say that?

Mr. Daniels. The report language will.

Now let's go to page 3 of your statement.

Mr. Taylor. Mr. Chairman, I just wanted to check that with you once more because, if I understand the bill correctly—and I did check that out with the people over in OSHA who were responsible for its drafting—that any employer in any State regardless of whether it is a preempted State under the 7(c)(1) contract or without section (b) may request such services as provided in your bill.

Mr. Miller may have told you that we would interpret this in a different way, but I would say that if it is going to be interpreted in the way that he said, the bill in itself rather than the legislative history, or the committee report, should make this plain because another secretary might interpret it another way. It is conceivable an employer in California who might be discontented with the kind of consultative service under Cal-OSHA might ask for direct on-site services from the Federal Government.

Mr. Daniels. You may suggest and I will see that the report spells it out very distinctly so there will be no misinterpretation.

Mr. Taylor. Let me illustrate an instance of something happening along the line I suggested. This request would be handled in one of two ways. Either the area office of OSHA would refer this to the California program which would either take it up or not take it up or would send in consultative personnel. What if an imminent danger was found by the Federal consultative personnel and referred to the CAL-OSHA program and it might find this as not being a danger involving a standard under that State's program, which is not the same as the Federal system.

Mr. Daniels. You have been involved in the drafting of this legislation over the years and you understand this legislation very well. You know, so far as State plans are concerned, they must be equally as effective as the Federal legislation. So, if my State plan doesn't measure up to the minimum requirements of the Federal law, the Secretary of Labor will quickly make them come into compliance or not approve their plan. Is that not correct?

Mr. Taylor. That is a correct statement on paper but in practice we have found most State plans are not as effective in most ways. That is our opinion. That includes CAL-OSHA, which is one of the better plans.

The 6-month report of OSHA on these plans has certainly revealed astounding weaknesses in them which under any other type of administration I think would result in a question of whether those plans should continue or not.

Mr. Daniels. Mr. Taylor, in response to the statement you just made, that many States plans are not as strong as the Federal requirements and the plans are not being enforced, if you will inform this committee what States are not doing their job, not carrying out terms and provisions of their plans, I assure you this committee will take immediate action.

Mr. TAYLOR. We will be very happy to respond to that.

[Information referred to follows:]

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., August 28, 1975.

Hon. DOMINICK V. DANIELS,
U.S. House of Representatives, Chairman, Subcommittee on Manpower, Compensation, Health and Safety, Washington, D.C.

DEAR DOMINICK: During the course of the appearance of the AFL-CIO on July 31st before your subcommittee to present our views on H.R. 8618, you asked us to furnish you material dealing with adequacies of Section 18, state plans approved by the Assistant Secretary for OSHA.

The material you requested is enclosed.

Sincerely,

GEORGE H. R. TAYLOR,
Executive Secretary,
AFL-CIO Standing Committee on Occupational Safety and Health.

Enclosure.

SUMMARY OF THE REVIEW OF FIRST OSHA SEMIANNUAL REPORTS ON APPROVED STATE PLANS

This report demonstrates the many areas of unevenness and inadequacy of performance among states with operating OSHA plans under Sec. 18 of the Act.

A mistaken policy produces programs to match. The net result is that employees in states with OSHA plans are being provided with second-best protections to their lives and health on the job.

The AFL-CIO summary is not our findings, but rather a compilation of those by OSHA itself in its semiannual reports evaluating the performance of the State Programs.

Even weighed against the over-lenient OSHA guidelines, it can be concluded, however, that the Nixon-Ford Administrations OSHA state participation effort has produced only two results:

1. A waste of money and manpower, which would have yielded far better results if spent in greater measure to meet Federal responsibilities.
2. Deprivations of millions of workers of protections under the Act as effective as those afforded by the Federal programs.

The AFL-CIO will communicate with the Assistant Secretary on particular states, which show substantial and uncorrected failure to carry out their plans in accordance with the conditions of approval.

INTRODUCTION

The Occupational Safety and Health Act of 1970, Section 18(f) states in part, "The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan." To comply with this statutory requirement, the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, issued in November 1973, OSHA Program Direction #73-10 and the State Program Performance Monitoring Guide. These documents lay out the procedures and methods by which OSHA evaluates the performance of States with approved State Plans. Among the evaluation methods used by OSHA is the Semi-Annual Report which is designed to "provide a total picture of the State's performance in carrying out its program."

The evaluation criteria used by OSHA in the Semi-Annual Reports are the same as those used in the evaluation of State Plans: 29 CFR 1902.3 and 1902.4. (The complete text of these criteria is included as Appendix A). To determine how well the states are meeting the evaluation criteria the OSHA monitors are required to conduct case file reviews on a sample of state inspection files. conduct on-the-job evaluations of state compliance personnel, and conduct spot-check inspections when necessary. On-the-job evaluations, however, were not conducted in five states (Kentucky, Tennessee, N. Carolina, S. Carolina and Vermont) during the period covered by the first Reports.

This summary is based upon a review of the Semi-Annual Reports for 18 of the 26 states which currently have approved state plans. Of the 18 Reports reviewed here, all are first Reports except Washington's (the second Report is used because the first Report was unavailable). The 8 states omitted from this summary include those for which no Reports are as yet available (Indiana, Michigan, Wisconsin, Wyoming and Arizona); and those Reports which lack sufficient data for evaluation of state performance (Connecticut, Utah and the Virgin Islands). The 18 states included in this summary are:

Alaska (19/73-3/74)[1]
California (1/74-6/74)
Colorado (9/73-3/74)
Hawaii (3/73-9/74)
Illinois (1/74-2/74)
Iowa (1/74-2/74)
Kentucky (8/73-1/74)
Maryland (7/73-2/74)
Minnesota (7/73-1/74)
Nevada (1/74-7/74)
New Jersey (11/73-5/74)
New York (8/73-4/74)[2]
North Carolina (1/74-2/74)
Oregon (8/73-1/74)
South Carolina (9/73)
Tennessee (7/73-12/73)
Vermont (4/74)
Washington (12/73-5/74)

In the first part of this summary, the focus will be on trends in activity among the states by specific criteria (See Appendix A). The second part will point out important findings for individual states not reflected in the general findings stated in Part 1. The final section consists of a summary tabulation of problem areas for each state.

It should be noted at the outset that this review is of the OSHA Semi-Annual Reports not of State Plan activity directly, and to that extent this review is limited in what it can say or infer about the actual performance of states under their respective plans. Moreover, the Reports often lack comments on specific criteria. Thus, it should not be assumed that the absence of criticism of a state on a specific criterion means the state is performing adequately or inadequately in that area. Finally, it is the intent of the following summary to concentrate on the inadequacies and problems in State Plan performance.

PART I

Personnel (1902.3)

The personnel criterion consists of two major elements, the numbers and qualifications of personnel.

With regard to number of compliance personnel all the states reviewed here were found to be inadequately staffed with perhaps the exceptions of *Oregon* (71 safety, 8 health), *Vermont* (9 safety, 5 health), and *Washington* (66 safety, 16 health). Three states had no industrial hygienists (*Alaska*, *Hawaii* and *Nevada*), but *Hawaii* and *Nevada* were developmental in their health programs. The difficulty in recruiting industrial hygienists was noted by a number of states in response to their respective Reports. Cited in their Reports for having too few health compliance personnel were the following states: *Iowa*, *Kentucky* (27; 6)[3], *Maryland* (70;6), *Minnesota* (31;4), *N. Carolina* (34;4), *New Jersey* (80;7), *New York* (355;9), *S. Carolina* (28;4) and *Tennessee*.

While the personnel qualifications requirement can be met under the law by the merit system as provided in 45 CFR Part 70, the merit system itself is based on at least three factors which were addressed in the Reports: training, education, and experience.

Only one state (*Illinois*) was found not to be using or even attempting to use the merit system. In addition, *Illinois* inspectors were either unable or unwilling to perform their inspection responsibilities in a number of areas (e.g. employee interviews, hazard identification, etc.) The lack of basic training showed up in *Hawaii* and *Nevada* where 34% and 85% respectively of the enforcement personnel had not attended the basic OSHA training course or its equivalent.

OSHA recommended that *Maryland*, *Tennessee* and *California* implement cross-training programs between the health and safety functions. *Kentucky* health inspectors were found to have inadequate training; and *Hawaii* and *Nevada* safety inspectors needed health hazard recognition training. *Iowa, Nevada, Vermont* and *Maryland* were also cited for various other training deficiencies.

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[1] The dates in parenthesis indicate either the 6-month period covered by the reports of the period of on-site visits.

[2] Both New York and New Jersey are without enabling legislation.

[3] Numbers in parentheses represent safety and health compliancce personnel.

Finally, *Hawaii* and *Vermont* lacked all or part of their safety and health position descriptions; *Alaska* has changed its entry safety inspector qualifications by eliminating any experience requirement; and *California* created a new class of industrial hygienist positions with less stringent requirements.

Resources (1902.3 i)

Expenditures in 9 states were below the amounts originally appropriated. The reasons for the lower than expected expenditures varied among the states, (1) manpower shortage (*Iowa, Minnesota,* and *Tennessee*), (2) slow development and implementation of various aspects of plans (*Illinois* and *Nevada*), (3) lack of enabling legislation (*California,* but the state has since passed such legislation), and (4) inability of the state to match federal funds (*Hawaii*). For *Maryland* and *S. Carolina,* the Reports did not specify why the states underspent.

Although expenditure levels are not in themselves a good measure of the effectiveness of State Plans, it is clear from the reasons cited in the Reports that failure to make use of available funds reflected basic problems with State Plan implementation.

Public Employees (1902.3(j))

Coverage of public employees varied among the states. For the most part employee programs were being developed or implemented (*Colorado, Illinois, North Carolina, New York, South Carolina* and *Tennessee*). The *California, Hawaii, Minnesota, Nevada* and *Washington* programs appear operational. The reports offered few specific indicators of plan activity or effectiveness in this area (except for California, Hawaii and Nevada).

Coverage of *California, Hawaii* and *Nevada* public employees seemed to be close to fully operational with inspections being carried out and citations being issued. *Hawaii* conducted complaint inspections but had yet to institute a general schedule of inspections. The public and private employee programs in *Nevada* were identical except no penalties were assessed against public employers. However, *Nevada* has included voluntary compliance within its public sector program and OSHA has cautioned the state to guarantee that the program would not be weakened by this added procedure.

The *Maryland* program exemplified poor public employee coverage, as its plan relied on voluntary compliance and had no provision for enforcement or punitive action.

Inspections (1902.4(c)(2)(i))

This criterion involves a number of measures of plan effectiveness; for example, the ratio of safety inspections to health inspections, inspection priorities, distribution of inspections by type of inspection and type of industry, adherence to prescribed inspection procedures, incidence of follow-up inspections, etc.[4] All the states considered here (except *New Jersey* and *New York* which had no inspection program due to the lack of enabling legislation) exhibited shortcomings in one or more of these measures. But each Report did not comment on each of the measures, thus we cannot be sure how effective state activity has in fact been. Moreover, a number of the Reports noted that record keeping requirements and procedures of the states made determination of the effectiveness of program performance impossible.

Specific examples by state:

Alaska—Opening and closing conferences: 29 of 42 cases files reviewed did not contain information on who participated, what was discussed, or if one was held. On-the-job evaluation inspections disclosed that inspectors followed the compliance manual, however, federal inspectors found 14 more non-serious violations than state inspectors. Average elapsed time between a complaint and an inspection was 5 days. Lack of abatement evidence was uncovered in 31 files with citations. While follow-up inspections are mandatory for all but non-serious violations the quarterly report for 12/31/73 to 3/31/74 showed only 3 follow-up inspections and none for serious violations.

California—Few health inspections were held. When Industrial Hygienists inspected they failed to follow prescribed inspection procedures.

Colorado—The Operations Manual was incomplete. Average production per compliance officer (safety & health) was lower than desired by OSHA.

Hawaii—For 4th quarter 1974 and 1st quarter 1975, 77% of all inspections were in construction and only one serious violation cited, 9 which were cited as non-serious could have been cited as serious. Problems existed in 20% of the closing conferences examined in the case file reviews.

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[4] **Additional specific data are available from the quarterly reports for each State.**

Illinois—State capabilities and practices prevented it from conforming to its inspection priorities. A Target Industries Plan had not been developed. Complaint responses were minimal. Inspection assignments inadequately monitored to insure that inspections were made and within a reasonable time. Inspectors were inaccurate in describing the types of inspections which they conducted. Of 393 cases files reviewed only 14 were accident inspections, 27 complaint inspections, the remaining 352 inspections were general schedule. No follow-up inspection and no Target Industries or Health Hazard Program inspections were conducted. Deficiencies in opening and closing conferences were noted in nearly all the case files reviewed. In the 57 health files reviewed the vast majority of inspection items noted by the inspector had to do with safety and not health.

Iowa—The inspection scheduling process was poor. On-the-job evaluations disclosed some problems with opening and closing conferences and with hazard identification. Time spent on inspections was too long. A complaint priorities system was lacking. Inspectors were inconsistent or inaccurate in violation gravity classifications and supplied inadequate information to verity violations.

Kentucky—Distribution of inspections by industry differed substantially from federal OSHA by over-emphasizing manufacturing and underemphasizing construction. Complaint response period was 9.5 days for safety and 15.2 days for health. Verification of violations was inadequate. Violation gravity classifications were inconsistent.

Maryland—Deficiencies in opening and closing conferences existed. Inspection assignments of non-construction inspections (35% of all inspections) were not related to "worst-first principle". Only .7% of all inspections were complaint investigations.

Minnesota—There was no evidence of follow-up inspections in 39 cases. Report said very little else about inspection performance.

Nevada—Distribution of inspections by type for the 3rd & 4th quarters FY 74 were: .3% fatalities, 4.5% complaint, 91.4% general schedule and 3.9% follow-up. Although follow-up inspections were required for all serious violations they were not being conducted. Of 141 case files reviewed, 24% failed to indicate whether opening conferences were held.

North Carolina—All health inspections were referrals; the majority were for noise. All citations were for noise and no penalties. State Labor Commissioner ruled the state will not investigate complaints submitted by an authorized representative of a union, who is not an employee.

Oregon—State lacked Operations Manual. Of 100 case files reviewed 89 lacked information on who participated in opening and closing conferences. State inspectors failed to cite 69 of 311 safety hazards and 5 of 16 health hazards. The state had no policy of mandatory follow-up inspections or serious violations

South Carolina—A major quantity of inspections were in retail trade (29%) which suggests a misdirection of inspection priorities. Evidence of follow-up inspections was lacking in 85 cases.

Tennessee—Inconsistent gravity classifications existed in about 1/5 of cases reviewed by OSHA.

Vermont—Based on the case file review the state had failed to conduct follow-up inspections as required. Complaint Response: from 1 to 14 days. Of 41 case files reviewed 20% lacked adequate evidence to verify violations; 17% were deficient in violation gravity classifications and 16% of the citations were inaccurate.

Walkaround (1902.4(c)(2)(ii))

A major problem noted in several Reports (*Alaska, California, Hawaii, Kentucky, Minnesota, North Carolina, Nevada, South Carolina, Tennessee, Vermont*) was the lack of evidence in files of employee participation in the walkaround or of sufficient employee interviews. Since this is a crucial right of employees under OSHA it should be a strict requirement of the states that they clearly document whether this criterion is being met.

In four states (*Alaska, Illinois, Iowa,* and *Washington*) the on-the-job evaluations disclosed that employees were not being apprised of their rights to participate in the inspection, did not participate and/or were not adequately interviewed. The OSHA report recommended that *Oregon* "provide written assurance that the Oregon Administrative Rules, to be adopted July 1, 1974, contain a requirement for mandatory consultation with employees when no employee representative participates in the walkaround portion of an inspection," since the Oregon Safe Employment Act provides only for discretionary consultation. The Report did not give employee participation data under the current Oregon law.

The Reports on the remaining 4 states, *Colorado, Mayland, New Jersey,* and *New York,* contained no comments on employee participation in inspections. In the cases of New Jersey and New York this was due to the lack of an enforcement program the result of no enabling legislation.

Employee Notification of Complaint Denial (1902.4(c)(2)(iii))

While the problems in this area were not shared by as many of the states, where problems did exist they suggested a serious threat to the rights of complainants. The most common shortcoming noted in the Reports (*Illinois, Minnesota, Oregon, South Carolina* and *Vermont*) was the lack of documentation in state files of notification of complainants of action taken (or not taken). *California* was found to have long delays in responding to health complaints due in part to the system of referring such complaints to the Health Department for action. The OSHA Report for *Nevada* noted that the state's occupational safety and health law lacked any provision for complainant notification, and the Report for *Oregon* recommended the development of a method to inform complainants of action taken. In *Tennessee* complainants were not told of their right to appeal action taken or not taken.

TABLE I

Average elapsed time from filing of complaint to complaint response

State	*Average number days elapsed*
Alaska	5.
California	3 (this is the requirement under the California/OSHA and appears to be adhered to).
Iowa	44.
Kentucky	9.5 (safety); 15.2 (health).
Minnesota	4 (safety); 14 (health).
Oregon	7.
Vermont	14.

No data was available on the remaining States.

Prompt Notice of Alleged Violation (abatement, posting, penalty, notification) (1902.4(c)(2)(x))

This criterion also contains a number of measures of effectiveness. The Reports indicated the following:

(1) Average Elapsed Time From Inspection to the Issuance of a Citation:

TABLE II.—AVERAGE NUMBER OF DAYS ELAPSED

State	Safety	Health
Alaska	13 (safety and health)[1]	
California	15 (safety and health)	
Hawaii	16.5 (safety and health)	
Illinois	54	18.6
Iowa	80 (40 by May 10, 1974)	
Kentucky	26.9	44.8
Maryland	39 (State response: 14)	
Minnesota	11.8	40.0
Nevada	10.75	([2])
North Carolina	9.64 (safety and health)	
Oregon	11	22.0
South Carolina	12 (safety and health)	
Tennessee	23.6 (State response: 7 for 2d 6 mos)	36.0
Vermont	15	22.0
Washington	14 (safety and health)	

[1] Where only 1 number for average elapsed time was given in a report it was assumed that it represented the average for both safety and health activity.

[2] No health compliance program.

Note: Federal OSHA considered in the neighborhood of 15 days or less acceptable. No data were available for Colorado, New Jersey, and New York.

For the following measures of effectiveness (2), (3), & (4) a state was considered to have a problem when 10% or more of the case files reviewed contained deficiencies noted by OSHA.

(2) Nine states (*California, Hawaii, Illinois, Iowa, Kentucky, Nevada, South Carolina, Vermont,* and *Washington*) had inadequate or inaccurate violation descriptions.

(3) Eight states (*California, Hawaii, Iowa, Kentucky, North Carolina, South Carolina, Vermont,* and *Washington*) misclassified violations. Minnesota lacked documentation of how gravity classification was determined.

(4) Nine states (*Alaska, California, Hawaii, Iowa, Minnesota, Nevada, North Carolina, Tennessee,* and *Washington*) were found to assign excessive or inappropriate abatement periods.

Penalties (1902.4(c)(2)(xi))

The average amount of a penalty assessed by the states, especially for serious violations, was less than that assessed by OSHA. The differences can be accounted for in part by the different time periods being used, the fact that the Federal OSHA program has been in operation substantially longer than the state programs, and the staffing levels differ between (and among) the states and Federal OSHA. Beyond these methodological considerations, however, part of the differences between state and Federal average penalties can be explained by a variety of shortcomings in state programs as noted in the Reports.

TABLE III.—AVERAGE PROPOSED PENALTIES

State	Nonserious	Serious	Federal OSHA [1] Nonserious	Federal OSHA [1] Serious
Alaska	12.24	$450.00	$14.01	(593.27)
California	NA	[2] 374.00	NA	[3] 639.46
Colorado	NA	[3] 516.67	(14.01)	593.27
Hawaii	11.27	455.00	NA	NA
Kentucky	10.27	(4)	(15.57)	(615.00)
Maryland	2.90	229.00	(15.57)	615.00
Minnesota	41.97	NA	(15.57)	(615.11)
Nevada	0	588.00	(19.00)	(802.00)
North Carolina	8.45	551.79	15.57	615.11
Oregon	NA	240.00	NA	NA
South Carolina	1.83	253.00	19.00	802.00
Tennessee	NA	500.19	(15.57)	615.11
Vermont	13.52	712.50	14.01	(593.27)
Washington	NA	94.72	(14.01)	(593.27)

[1] The Federal OSHA figures are for periods comparable to those covered by the State data.
[2] Includes willful, repeated and imminent violations penalties.
[3] While serious penalty amounts are comparable between Colorado and OSHA, Colorado assessed significantly fewer penalties per inspection and notices than OSHA.
[4] Same as OSHA.

Note: Data for Illinois and Iowa not available. New Jersey and New York had no enforcement program.

Two states had significant additional problems. In *Illinois* the penalty payment rather than proof of abatement signaled closing of the case. Obviously this procedure does not serve to protect the health and safety of workers because penalties tend to be minimal. *California/OSHA* penalty provision were more stringent than Federal OSHA since they allowed for ciminal as well as civil sanctions. But no criminal sanctions had yet been assessed and the Bureau of Investigation which was to handle such cases was not formed. Moreover, California/OSHA had a general duty clause similar to OSHA but inspectors used a "Special Order" when citing hazards not covered by standard and the "Special Orders" did not allow for assessment of civil penalties.

In the *Illinois, South Carolina,* and *Vermont* Reports OSHA noted inconsistencies in the assessment of penalties. Misclassifications of violations leading to inappropriate penalties were found in the cases of *Maryland* and *North Carolina.* Several states (*Alaska, Iowa, Maryland,, Nevada, Tennessee,* and *Washington*) issued very few penalties for first instance nonserious violations. *Hawaii* assessed no penalties for failure to abate, and willful or repeated violations, and *Nevada* had no uniform written policy regarding these types of violations.

Review Procedures (1902.4 (c)(2)(xii))

For several states the rules, regulations and procedures covering informal conferences and review of cases either do not exist (*Alaska, Nevada*) or had not become fully operational (*Maryland*, and *North Carolina*), and in one state (*Tennessee*) there was no review commission yet established. A number of problems were noted in *Illinois*, including irregular prehearing settlement procedures, inadequate hearing procedures, ineffective hearing examiners, and inspectors ill prepared to present legally sufficient testimony.

Various states had peculiar and serious problems: *Minnesota's* informal conferences do not provide for employee participation. The state argues that employee participation is not required by law and that separate informal conferences for employees are available.

Under *New York* OSHA employers have 30 days to contest citations while OSHA allows only 15 working days, and in *California* the 15 workday contest period has loopholes. In *Iowa* OSHA could find no indication that employees are aware of their rights under the appeals system. The inadequate documentation of facts in *Washington's* case files served as grounds to vacate or modify citations in 52% of the cases reviewed. Finally, *Hawaii* OSHA provided only the employer and not the state department of Safety and Health access to judicial remedy.

Voluntary Compliance (*1902.4(c)(2)(xiii)*)

Alaska state legislation does not specifically provide for on-site consultation. OSHA recommended the state develop regulations and procedures to cover on-site consultation and include a provision granting consultants the authority to set abatement periods for serious violation found during consultation and follow-up visits. However, it is unclear whether OSHA was recommending that such violations would then become subject to enforcement procedures. The situation in *Oregon* sheds some more light on this problem. On-site consultation regulations and procedures were not to be promulgated until 7/1/74. OSHA noted 2 specific problems with the Oregon programs: 1) consultants addressed themselves only to the specific problems for which their services were requested. Thus, serious hazards may have gone undetected. 2) District supervisors were notified of consultative visits and delayed scheduled enforcement inspections for "a reasonable period of time." This may have delayed discovery of serious hazards. If consultants found serious violations they would set abatement periods and would conduct a follow-up inspection at the end of the period. Only then would enforcement staff be called, if needed. This procedure could have allowed serious hazards to be prolonged and caused problems in scheduling compliance inspections. The state's response to the OSHA criticism was that the policy of delaying scheduled inspections by 30 days after consultative visits was necessary to foster confidence in the consultation program.

The *Nevada* voluntary compliance program was being conducted by enforcement staff in direct violation of OSHA as interpreted in OSHA directive 72–27 which requires consultation and enforcement programs and staff to be totally independent and separate.

Problems with in-house training were noted in several states. In both *New Jersey* and *New York*, OSHA recommended that the states train their staffs in OSHA-type standards even though the states lacked enabling legislation. Both states agreed to this approach but came forward with no program to implement the recommendation. Moreover, *New Jersey* training courses concentrated on product safety and were conducted by outside instructors, who were often vendors In general, instructors had insufficient familiarity with OSHA-type standards

Washington instructors were found to be lacking in broad knowledge and *South Carolina* staff were found to need more and better training in the health area. Finally, although *Iowa* had an adequate training program, not all of its staff were adequately trained.

Two states had not disseminated sufficient or accurate information as part of their voluntary compliance programs. The proposed *New Jersey* occupational safety and health information brochure did not include the required information on the rights of employers, employees and the public under CASPA (Complaints Against State Plan Administration) and OSHA recommended this information be incorporated into the state poster. Similarly, *Hawaii* failed to adequately inform business or labor of the voluntary compliance program or the state OSHA program, especially the CASPA provision. In addition, *Hawaii* was found to be devoting a disproportionate amount of employee/employer training and consultation to the public sector.

Finally, in *Colorado*, OSHA recommended and the state agreed that all new staff be enforcement until the ratio of technical assistants to compliance personnel dropped to one in four (25%).

PART II

Alaska—There were 3 cases of employers refusing inspectors entry to their establishments (1902.3(e)). In one case the state gained entry after 12 hours, but the other two cases involved complaint inspections of private contractors on a federal establishment and these were turned over to OSHA for a jurisdictional ruling.

California—Of 716 case files reviewed, 379 (54%) failed to document whether inspectors checked for posting or recordkeeping violations (1902.4(c)(2)(iv)). Employees were not exercising their right to observe the monitoring or measurement of toxic substances (1902.4 (c)(2)(vi)).

Colorado—Procedures for adopting temporary emergency standards had not been adopted, however, the state responded that it would do so when necessary (1902.4(6)(2)(v)).

Hawaii—The question of jurisdiction over private employers on federal establishments arose here (as in Alaska) and a ruling was pending (1902.3(e)). While employee protection from discrimination is provided by the state law there was no means of enforcement since access to the courts was not provided by law. Moreover, such orders appeared to be appealable to the Appeals Board only, and not the courts (1902.4(c)(z)(v)).

Illinois—The OSHA report noted that the state occupational safety and health program is administered by the Illinois Industrial Commission but that it commands a relatively small amount of the Commission's attention (1902.3(b)). While no cases of advance notice of inspection occurred, information regarding the activities of one inspector in one specific area was leaked to employers (1902.3(f)). Submission of data for Quarterly Reports was running behind schedule (1902.3(1)). OSHA Maritime standards were adopted but like some state safety and health laws they were not being enforced (1902.4(a) (1) or (2)). Some confusion exists among employers and employees as to the nature, function and availability of variances (1902.4(b)(z)(iv)). The state had not validly adopted temporary emergency standards for vinyl chloride, and turned over to OSHA a request for a temporary emergency standard due to an inability to handle it (1902.4(b)(z)(v)). The OSHA report mentioned in passing that problems may exist in the state's promulgating standards incorporating information to employees about hazards (1902.4(b)(z)(vi)). Thirteen of twenty-two employee representatives interviewed by state inspectors had not received the required information on toxic substances to which they were exposed. None of the case files reviewed disclosed evidence of inspectors reviewing required monitoring activity (1902.4(c)(z)(vi)). The case file review uncovered no imminent danger citations, yet the on-the-job monitoring revealed 2 cases where state inspectors failed to recognize imminent danger conditions (1902.4 (c)(z)(vii)).

Iowa—Sampling techniques were not adequately defined to support.

Kentucky—The case file review revealed a minimal use of electrical standards (1902.4(a)(1) or (2)). The state had set no time limit for the acceptance or rejection of a proposed standard or rule while OSHA has a 270 day limit (1902.4 (b)(z)(ii)). Rules covering participation of interested parties in standards development do not provide for review proceedings at specific locations as provided in OSHA (1902.4(b)(z)(iii)).

Maryland—The federal recordkeeping requirements (1902.3(1)), and the rules, regulations, and procedures covering variance activity (1902.4(b)(z)(iv)) and promulgation of temporary emergency standards (1902.4(b)(2)(v)) were not met by the developmental deadline.

Nevada—The state was preempted in the areas of health standards enforcement and investigation of discrimination complaints (1902.3(g)). In 24% of the case files reviewed by OSHA there was no indication of enforcement review of the posting requirement and 28% of the case files failed to indicate whether employer records were reviewed (1902.4(c)(2)(iv)). The Nevada Occupational Safety and Health law does not provide for employee information on toxic substances (1902.4(c)(2)(v)).

New Jersey—OSHA recommended that New Jersey arrange for promulgation of OSHA-type standards that meet federal criteria under the existing Worker Health and Safety Act as the state has been unable to pass enabling legislation (1902.4(b)(2)(i)). As noted previously (under the Voluntary Compliance

Section) the proposed state OSHA Information Brochure does not include the required information on CASPA rights of employees, employers and the public. OSHA further recommended that New Jersey prepare an OSH poster incorporating notice of the CASPA program (1902.4(c)(2)(iv)).

New York—The Board of Standards and Appeals has issued large numbers of variances per year. A review of variances granted is underway and the state assured OSHA that all variances would be eliminated or set up for review by the end of the third year of the developmental period (1902.4(b)(2)(iv)). State law included a general duty clause which allowed for administratively establishing temporary emergency standards. The state had yet to promulgate an ALAEA carcinogen or vinyl chloride standard. The state responded that the concept of a temporary emergency standard did not exist under the current state law and that such standards would have to be promulgated through existing procedures for permanent standards.

Oregon—The state had not yet adopted standards ALAEA OSHA and it was not clear whether Oregon will have all required standards adopted and in effect by the end of the third year of the developmental period (1902.4(b)(2)(i)). The state also lacked procedures for incorporating changes in federal standards into state standards (1902.4(b)(2)(iii)). Formal regulations and procedures had not been adopted covering the granting of variances, and Oregon/OSHA lacks a requirement as contained in OSHA relating to employee notification of variance application (1902.4(b)(2)(iv)).

South Carolina—The state provided for only a brief description of a proposed rule or regulation to be published in a newspaper, but OSHA requires publication of a notice specifying the standard which is subject to a hearing. The state maintained that its procedure was accepted practice in the state (1902.4(b)-(2)(iii)). State legislation lacked a provision (similar to OSHA, Section 11(c)-(3)) requiring the secretary to notify the complainant of his determination in discrimination cases *within 90 days*. The issue is timeliness, with the state arguing that explicit time limits hinder investigations. But the rights of employees to a fair and speedy disposition of their case is crucial (1902.4(c)(2)(v)).

Tennessee—While no cases of advance notice of inspection were found by OSHA monitors, the state law did allow for broader exceptions than OSHA (1902.3(f)). The state had no regulations or directives prescribing the format for standards initiated by the state (1902.4(b)(2)(ii)).

Vermont—The state had not adopted procedures to provide employees with information on their exposure to toxic substances. Case file review did not find evidence that compliance personnel had inspected for exposures to which employees are entitled information (1902.4(c)(2)(vi)).

Washington—It was found to be a state policy not to cite violations of ventilation standards until TLVs were exceeded or until hazardous conditions developed. The state was also not enforcing the National Electrical Code (1902.4)(b)(2)(i)). The required description of how employees were informed of variance applications was missing from all but 5 of 47 case files reviewed with granted variances. Only 10 of the granted variance files contained a description of conditions, practices, etc., that were used that differed from the standard in question (1902.4(b)(2)(iv)). Laboratory facilities were inadequate; however, the state indicated plans for upgrading the facilities were being developed (1902.4(d)).

Mr. Daniels. This committee plans later on this year to conduct oversight hearings, probably resuming those hearings in the month of September.

Mr. Beard. Mr. Chairman?

Mr. Daniels. I yield.

Mr. Beard. As I understand what you have said, you have raised the question there is a conflict in possible interpretation between the Federal inspector and State inspector, and what do you do in that case. That is what I understand your position to be. In that case, I would like to direct a question to the Chairman. The Chairman put this together through the years, and you properly stated that.

Mr. Chairman, I think the question is, what occurs if a State inspector and a Federal inspector simultaneously or at a different time have a conflict as to what their conclusion is on making a judgment as to a particular violation, be it hazardous, imminent danger, where do you go? Who is the ultimate judge? That is the way I understand the question. Am I correct?

Mr. TAYLOR. Yes.

Mr. DANIELS. You don't mean the State inspector, you mean the State consultant?

Mr. BEARD. Yes. It is confusing to me. I would like to understand it better. Am I off base, or have I zeroed in to what you have said?

Mr. TAYLOR. The question we are raising is what would happen in such a situation from a practical standpoint. As I say, one or two things could be done by OSHA if a consultant was sent in to a State on request from an employer where there is a section 18 plan. He could either refer the matter to the State program and sort of back out of it or, if he felt that a Federal standard was involved here, an imminent danger or serious hazard, which is contained in Mr. Daniels' bill as being one requiring further action, then he would have to refer it to the enforcement branch of the State program.

Now the enforcement branch would either interpret it the same way and take appropriate action or interpret it another way, depending on how the State operated. You wouldn't know what response you would get because each State plan is interpreted a different way. They have their own standards and they might get into a conflict of how the standard or enforcement situation is interpreted in terms of the compliance manual. These are questions we don't think have been given adequate discussion in the hearings up to now and we wanted to bring them up for further consideration of this committee so it could put its mind to it.

Mr. DANIELS. I have a clear picture of the situation and I might say we have 22 States under 18(b) that have State plans, two of which do not have consultative services programs. Now of the other 34 jurisdictions, we have 15 who have requested (7c)(1) consultative services with 50-50 funding from the Federal Government. That leaves 19.

The report will clearly spell out as to those 19 jurisdictions that they will be given priority consideration, so I see no conflict.

Mr. QUIE. Will the gentleman yield?

Mr. DANIELS. I will be happy to yield.

Mr. QUIE. I can't understand why it is so important that the State and Federal consultants might come to different conclusions. I imagine one Federal consultant might come to a different conclusion than another Federal consultant. The same happens in interpretation of the standards because they are not exact. There is a human error that exists in inspection as well. And if the State consultant didn't provide the right information as to Federal standards, it's sort of tough. The employer then is judged by the Federal inspector, and is not able to say, "A consultant told me that wasn't necessary." That happens all the time in inspection, doesn't it?

Mr. TAYLOR. I recognize since you have several hundred human beings, all of different types of intelligence and training working in any kind of program you will have some different human interpretation of workplace situations or other things.

The point I was trying to set before you gentlemen, and ladies, is that even though this does exist in the best ordered household, when you get one jurisdiction handling part of a problem and refer it to another jurisdiction, you are going to run into problems inevitably unless the matter is straightened out.

Mr. QUIE. I recognize that the more jurisdictions you have, the more often the problem arises. The question is, If employers are going to get the consultation they need, since the Federal Government has placed this duty on the employers, isn't it the Federal Government's responsibility and not that of the States to aid the employers who want to comply? It seems to me the purpose of consultation is aiding employers who vant to comply.

Mr. MCGUIGAN. We agree that the Federal Government has a responsibility in this field, Mr. Quie, but we think that that responsibility is being fulfilled by the actions that the Congress has already taken to make consultative money available through the Steiger amendment in the Labor-HEW appropriation last year—with which I am sure you are familiar—and through the other moneys that are available to OSHA for training programs, and so forth, which are now being put on in many communities to help both onsite and offsite so they have a number of facilities available to them now and we just don't believe this new legislation is necessary in order to enable the Federal Government to carry out its commitment to make the services available.

Mr. QUIE. It seems to me that you are opposing passage because the legislation is undesirable, not because it isn't necessary or because you feel it would be duplicative.

Mr. MCGUIGAN. We believe that it true. OSHA just began in May to use the moneys that you made available to them by appropriation last December. How long does it take to get a new program in place? Are we going to have two or three programs operating in the same field of furnishing consultation? We don't believe it is necessary nor that it is the most effective way of providing services to employers and employees.

Mr. QUIE. I just like what the gentleman from New Jersey's bill really entails. I find businessmen so aggravated because they look at OSHA as their adversary, and it seems to me this is a good step to help them look at it as something that is not an onerous task on them. Many of them I have talked to said, if we had only found out about it beforehand. There is the fear of an inspector coming in without an employer knowing what to do. It seems what all of us want are safer working conditions for the working people of this country and, if this legislation can help us get safer working conditions, that is what it seems to me is the most important thing we are looking for.

Mr. MCGUIGAN. Mr. Quie, we know, and in one or two cases we have run down, the complaints coming to members of the Congress. In one State every complaint was checked out to determine the relationship of the mail Members of Congress were getting to what was actually happening in the program of OSHA. Quite frankly, we felt much more hysteria was generated by certain groups of people, either political or semipolitical organization, than we did by the actual OSHA actions.

George, would you like to elaborate on that situation?

Mr. TAYLOR. We did make a check in one State, Mr. Quie, in Montana. There were some 500 letters of complaint from employees that were filed with Members of Congress from that State about OSHA, about the actions of the inspectors, the heavy fines, the forcing of some employers out of business because of the excessive cost of abatement and all the rest. Our State president went to the OSHA area office in Billings, Mont., and got the data on the number of inspections made in Montana. As compared to 500 letters, all of which complained about an action by OSHA, there were 91 inspections made, the average penalty was about $61, so there was a lot of smoke and very little fire in that State.

Mr. Quie. Where you have inspections, you get action as well. Take the Fair Labor Standards Act, for example. There is no possible way you could check on everybody to see whether they paid the minimum wage or not. But the fact that one person gets caught not paying and, therefore, gets hit by a fine, forces everybody else out of fear to stay within the Fair Labor Standards. The same is true with OSHA, but it is easier to understand what wage you should pay than the kind of standards you should have for your working conditions because there is human error involved in there. I recognize some people generate mail far beyond the anxiety that actually exists. However, my reaction comes from going around my district and talking to people who bring it up to me. I never was able to explain to them why it wasn't possible to provide that consultation. I have had experience as a farmer producing grade A milk and having to meet the city sanitary standards. If you can have somebody come in and tell you which things you must do to comply, that consultation gives dairy farmers peace of mind and better facilities in which to produce their milk. I think the same would apply to industry and at the same time assure conditions where their employees can be more safe.

Mr. Taylor. In Minnesota the State operates the OSHA program. It is not a Federal program and that State has consultative service which is being provided on a regular basis.

Mr. Quie. They didn't always have that service.

Mr. Taylor. The problem is the same whether the State administers the safety program or whether the Federal Government does insofar as making businesses acquainted with what they have to do in a way that is readily understandable. This is why in our testimony we say that one of the great lapses which we have brought before this committee and its previous oversight hearings is the fact a man operating a service station or dairy, or a small machine shop cannot have in his hand a small booklet applying to how he should bring himself into compliance in that particular type of work he is doing. So if he wants to get the standards, he doesn't have to get 18 inches of agate type, he can get the standards that affect his operation. It is explained in simple terms.

This is what we have been asking OSHA to do for 4 years. It has not yet been done.

Mr. Daniels. There is a quorum call on the floor, we just have time to get over there and reoprt so I declare a short recess and we will be back immediately after the quorum.

[Recess for quorum call.]

Mr. Daniels. The subcommittee will come to order.

Gentlemen, the Chair would like to ask a couple of questions.

For the record I would like to state that I was the original sponsor of the OSHA legislation. Mr. Taylor, Jack Sheehan, and many representatives of labor met with me, consulted with me, and gave us invaluable counsel and advice in the drafting of this bill. I was the prime supporter and manager of this bill on the House floor.

It is not my intent by the present legislation to weaken OSHA. What I want to do is try to strengthen it and make this law more acceptable and palatable to the public and to employers, covered by this act, of which there are over 4 million in the United States.

I would welcome the help and the advice of the gentlemen who are here today and I see no reason why we should disagree on trying to get a piece of legislation which will make this a stronger and more effective law. It is not my intent that first-instance violations should be exempted or waived. That will be clearly spelled out.

Now, I would like to point out that with regard to the 15 preempted States who recently signified their intention to conduct on-site consultation with funding under the appropriation of $5 million, is there any assurance that the other 19 jurisdictions who have not signified any intention so far, will come under the act?

Mr. TAYLOR. I think it is a little early to say, Mr. Chairman, on that. I think some of the problems——

Mr. DANIELS. What do we do if 1, 2, 3, 4, or 5 decide not to come in of the remaining 19 States?

Mr. TAYLOR. There is a basic problem in some of the States who would like to come in, that is the problem of funding. Your State of New Jersey is very much interested in the 7(c)(1) program but, because of the financial situation——

Mr. DANIELS. $400 million deficit.

Mr. TAYLOR [continuing]. They don't have the money for the 50–50 grant. We tried to point out section 7(c)(1) does not preclude 90–10, or 100–0 Federal funding.

Mr. DANIELS. It might be more attractive if we made it 100 or 90–10, that is true, but under present circumstances, when we have 15 States that have already signified their desire to participate in this program but with 19 not having given any signal of what direction they are going in, can we have States sitting side by side with one side providing on-site consultation and the other side not providing it? What kind of kettle of fish would we have?

Getting to your statement on page 3, Mr. McGuigan, you mentioned preempted States, 15 States, having congressional funding which appears as a matter of course in fiscal year 1976. That statement is true. Last month we had the supplemental appropriations bill which affected HEW and the Department of Labor and we appropriated an additional $5 million for fiscal 1976.

If I recall correctly, you were sitting in the gallery, and you heard the debate that day. Do you recall the remarks of the floor manager of that appropriations bill, Congressman Flood of Pennsylvania? The questions raised about on-site consultation and the need to appropriate an additional $5 million for 1976? Did he not say this is not a matter that comes under the jurisdiction of the Appropriations Committee, this is a matter that should be taken care of by the appropriate legislative committee, meaning this particular committee? What assurances have you after this year that you are going to continue to get funding from the Appropriations Committee for 1976, 1977, and the years thereafter when you take into consideration the remarks of Congressman Flood?

Mr. McGuigan. First, I would like to say that I read all of the debate and listened to some of it, and I wouldn't attempt to recall precisely the words of the floor manager on the appropriation measure.

It is my recollection that Congressman Flood was saying that this was not the place to talk about amending the OSHA Act. that this was a place to talk about the appropriations, and some of the suggestions that were being made in the debate indicated more a desire to amend the basic legislation appropriations.

Mr. Daniels. Excuse my interruption, but let me remind you what Congressman Flood said that day. I have it verbatim right in front of me. I am going to give you Mr. Flood's quote:

> Why in the world is this amendment here? it does not belong here. This is the appropriations committee. We cannot write a law here. This is a behind the scenes act masked under some technicalities of the rule to writer law. The rules committee heard Mr. Daniels say a hearing is now going on. For heaven's sake go before the proper legislative committee and say what one has to say. If this law is to be changed, go ahead and change it but the members wrote this law and, so long as they wrote it, it must be in force. If they want to change it that is all right, go ahead. The members have a right to do it but do it in the proper way. This is through the back door, this is the family entrance again so do not do this here. It does not belong here, this is an appropriation bill.

Do you remember Mr. Flood passing those comments?

Mr. McGuigan. I read Mr. Flood's remarks, and they were not directed toward the matter we are discussing here today, they were directed toward the Findley amendment which would have prevented enforcement of the act in any establishment employing 25 or fewer employees. They were not directed to this appropriation being made for the purpose of consultative services. This was the issue before the House—the Findley amendment, not this amendment.

Mr. Daniels. I beg to correct you. There was a discussion on the floor about on-site consultation at that time as well, and I was pinned down to make a statement on the floor that I would conduct hearings on this bill, and I am keeping my word to my colleagues in the House of Representatives, 434 other Members whom I admire and respect, and I desire the same mutual respect from them.

Mr. McGuigan. Mr. Chairman, may I respond to that?

Mr. Daniels. Mr. Risenhoover.

Mr. Risenhoover. I understand your concern about what is going on here.

Mr. McGuigan. Would you mind if I spoke to the question of appropriation for a minute?

Mr. Risenhoover. No; go ahead.

Mr. McGuigan. We have come to whether it is necessary to have an act of the legislative committee to continue the appropriation. Now, I don't think I am sure there isn't a member of this committee now here that didn't participate this year in putting together a jobs bill that picked up $5 billion of previously authorized money and voted to appropriate it, the President vetoed it. That much money was just lying around, probably billions more lying around that had been authorized but never appropriated

So I think the answer simply is that there is no assurance regardless of what the authorizing committee does, that money is going to be appropriated for whatever the purpose.

Mr. Risenhoover. Of course, that is something that will have to be decided when it gets to the floor. But I think in this particular case, and you know as well as I, what the general feeling of the public and these small businessmen is, especially in regarding OSHA and understanding whatever prevails. This is an attempt by the subcommittee to relieve some of those fears and get better health and safety standards on the job.

Now, I don't have any doubt in my mind at all that the money will be appropriated for these consultative services, there is that much feeling about OSHA and that much concern by the Members to satisfy their constituents.

I will give you an example of something that happened. During my campaign for election, we had a U.S. Senate race going on at the same time, and DOL sent a special team of inspectors into our district and raised hell. That Senate campaigner and I were the only ones remaining, and we practically had to disavow OSHA to have people who were not antilabor elected. OSHA in no small measure contributed to that.

You don't have better friends in the world than Chairman Daniels or Chairman Dent or the members of this subcommittee in this Committee on Education and Labor, but if we don't satisfy some of these complaints and relieve some of these fears, then you are going to have some Members up here who won't be a bit friendly to labor.

This is what we are trying to do, we have to represent everyone, and we are going to get better health and safety standards on these jobs if we pass this legislation. There will be more people out there—I think all the small businessmen want to comply with this Act. Most of the time they are afraid not to.

There is a lot of resentment, but if we can supply more people looking at these jobs for health and safety standards, whether consultants or not, whether inspectors, we will get more compliance.

Any time Federal law and State law conflict, Federal law prevails when they have Federal standards to meet. There is not going to be any conflict. The inspector, the Federal OSHA inspector, is going to be the one who prevails.

But we need to give these small businessmen and the others an avenue to voluntarily comply and have accurate advice when they are trying to comply. I think we will relieve a lot of the fears and concerns about OSHA and I think get a lot better compliance in this country and the jobs will be a lot safer for people. I believe that will occur if we enact this.

Mr. GAYDOS. Will you yield?

I would like to direct this question to my colleague and perhaps the gentleman testifying will add to it.

I checked the Senate testimony and a Roger Wingate, senior vice president of the Liberty Mutual Insurance Co., testified before the Senate that to the extent that his company, which represents in the neighborhood of 9 percent of the privately insured workmen's compensation business in the country, his company operates a professional staff of 640 people available for consultation by small business. The statement has been made by my colleague that small business is crying, just waiting to utilize this consulting service.

His experience has been this, he stated it in the record, his experience is that the first letters were written to the companies, then they phoned, "Here is the service available to you."

They found out that those businesses which requested such services needed it the least. On the contrary they found out that the ones that needed it the most didn't respond, so their track record in the record of his testimony is that, regardless of what they offered as far as consulting services to small business, that the desire of small business to utilize these services just is not there.

So, I can't understand why everybody makes the statement—Mr. Quie left—I thank my colleague for yielding—Mr. Quie said the same thing, all these small businesses are waiting, crying they are in need of consulting services. That is not true.

I suggest we should allow the $5 million to be utilized under the appropriation and get a track record and then take a second look. If it doesn't work, we can do something differently. Up until now we have nothing on which to base a decision and chart the further course. We don't have it. We haven't given enough time for this thing to work.

I would be willing to support anything which would ultimately help the act to work to make sure there are sufficient inspectors, consulting services and so on, but we have nothing to base a decision on.

Mr. **Risenhoover**. If there are the State government offering consultative services and a giant company offering consultative services, I know where I would go. I wouldn't go to an insurance company asking for consultation with respect to complying with a State law, when the State had an approved plan approved by DOG, standards have been set.

I know in my district a lot more small businessmen will call in State consultants before calling in an insurance company because they don't trust the insurance company either.

Here is the real point of this thing. Once we enact this legislation and they don't take advantage of it, they have no complaint when the guy comes in and cites them on the first violation. I won't tell them that where an insurance company is involved.

Mr. **McGuigan**. The point is this service is now available in your State, yours is a preempted State and consultative services are available.

Mr. **Risenhoover**. We are doing it because of the situation that happened in my campaign. Oklahoma is one of those that applied for the consultative service money.

Mr. **Taylor**. You have consultants in your State now.

Mr. **McGuigan**. It comes as no great surprise to any of the witnesses here that the OSHA act has been used for political purposes when the assistant secretary for OSHA suggested in a memorandum that came to light in the Watergate hearings that this was a good way to raise money, to go soft on enforcement. It comes as no great suprise they would use it the other way around to try to elect members of their party to Congress.

What I am pointing out now is that you have in your State precisely, I suppose precisely, what you would be getting if this amendment was enacted.

Mr. **Risenhoover**. I agree, but I am talking of the other States who don't have it. If we provide a vehicle with enough money in it where they can participate in the program and we put it out there where we say, OK, here it is, you better participate, then if they don't, there is—wait just a minute—I don't want to be sitting up here with 300 Republicans and that is just exactly what could happen.

In Oklahoma it is working fine, we did it, because of what they did during the summer and fall of last year. If these other States comply, we won't have this problem.

Mr. DENT. Will you yield?

Mr. RISENHOOVER. I yield to Mr. Dent.

Mr. DANIELS. The gentleman's time is up; I recognize Mr. Dent.

Mr. DENT. Problems arise when landmark legislation is enacted which attempts to do something that hasn't been done before, either on the State or Federal level. Often self-serving organizations lead small businessmen to believe they are going to repeal the act, or will get an exemption from the regulations.

Business and industry must realize that the House isn't going to repeal the features of this act. If they ever learn that, they will sit down and start to try to comply with the act. Many don't even make an attempt to comply with the act.

When they realize that we want them to cooperate because we are not going to eliminate inspections in this country, I think maybe you will get some results.

That is what we had to do in the coal mines. They had all the small mines out for 30 years, they were not covered by the mine safety law. Finally they agreed it was there to stay and we have no trouble with the inspectors going into mines.

I think this is your biggest problem, trying to get these people to understand that this is the law and it is going to be enforced, then we can work out the changes that might make it work better.

Once they are convinced they won't be left out from under the act, I think they will start consulting with us. Don't you think so?

Mr. MCGUIGAN. I think you are right, I think the efforts of the various front groups that started this whole letter campaign was for the purpose of using it as a lever to defeat the act completely or make it meaningless. This was the purpose behind the alleged consultative services and the 25 or fewer exemptions in first instance citations or inspections.

We have had 75 years of consultative services in the States and, as we said in our testimony, that is the reason why we have OSHA, because it didn't work.

I know that everyone of you have to be sensitive to the real problems and the needs of the business community as well as the working people in your State and I recognize your concern when you get one letter after another saying all hell is breaking loose in the working place because the inspector is in there and they are closing it down.

We checked with the Small Business Administration to see how many applications are being made by small businesses to provide the necessary loans, so if OSHA is coming in there and threatening to charge them too much for an abatement or in other ways raise the cost of doing business, you would expect to see a tremendous increase in small business loan applications. There have been about 150 so far.

Mr. GAYDOS. Would you yield?

Mr. DENT. Yes; of course.

Mr. GAYDOS. I think this is one point, Congressman Dent is the father of the Mine Safety Act. In that act I participated to a limited degree in the drafting of that act.

I don't think—I might be wrong—that we have any like or comparable provision in that act which would provide consultative services per se, what we are talking about, yet the Mine Safety Act covers active mines where three or four people will participate, strip mines, what have you. We don't have that much difficulty in enforcing that act.

I would like Mr. Dent's observation in drawing a parallel between the two acts.

Mr. DENT. They had some background to build on and, in fact, mining States had some sort of consultative services under their inspection system.

The most important of all of the provisions we put in to the act was that covering small mines. In the entire country at that time there were about 13,000 operating coal mines, not counting the strippers. Of the operating coal mines, there were only about 2,300 that were covered by the act in what they call title I.

The most numerous accidents occurred in the small mines which had no State or Federal inspection. We had to make a concession that there was no fine attached to first violation, they were given time to correct it.

For instance, if they found loose bolts on a cutting machine, they would be given 4 hours to get that machine off the job and correct the problem. If it wasn't inspected and back on the job in working order in safe condition, there was a fine right away. They couldn't get away from it. If there were any unsafe roof conditions, they would correct them.

In the mine safety law, the fine isn't important; the important thing is to make that roof safe and make that rail safe and make their lives safe, so that is what we should be thinking about here.

Fines have caused most of the trouble. An inspector who can't use a little judgment will give us more trouble than all the laws you might write.

I had one case where a fellow demanded I come down and let him show me a leak in a little open-faced piping; it was in the part of the garage where they wash cars. The leak was in the corner on a joint and it was coming down the wall and across the floor. The inspector went in and saw this water and slapped a fine on the fellow. The fellow asked him to wait a minute, and he went out and got a pipe wrench and tightened it up. There was no more leak, but he had to pay the fine. This is what causes trouble, and gives the opposition a megaphone. This is what we have to avoid.

Mr. GAYDOS. The fact still remains there was no great demand for consultative services as we are experiencing now in this legislation.

Mr. DENT. But the States have dual inspection and we can't get rid of it.

Mr. RISENHOOVER. Another consideration here, you said the Mine Safety Act covered 2,300 big mines. This covers 4 million people. There is a hell of a lot more flak going on than over the mines.

Mr. DANIELS. This act covers approximately 5 million working places and approximately 65 million working men and women in this country.

As Mr. Dent just pointed out under the Mine Safety Act there is a waiver of the first violation.

Mr. DENT. Except where there is imminent danger—we don't let him burn the mine down.

Mr. DANIELS. I am sorry, we are all through with the witnesses.

Mr. GAYDOS. We can't stay with two witnesses all day long. We have to get on with this hearing. I instituted the 5-minute rule this morning and I went against my own judgment by permitting you to go beyond the 5-minute rule.

Mr. DENT. I ask unanimous consent that the gentleman from Pennsylvania be allowed one more question.

Mr. DANIELS. A short question?

Mr. GAYDOS. A short question.

Mr. DANIELS. All right, you may proceed.

Mr. GAYDOS. I will yield to the Chair and ask another witness.

Mr. DANIELS. Thank you, gentlemen.

Our next witness is Mr. Jacob Clayman, Secretary-Treasurer of the Industrial Union Department, AFL-CIO.

I might say Mr. Clayman was of invaluable help and assistance to this committee when we had under consideration the drafting of the bill which became the OSHA law of 1970 and I am pleased to see he is here today to add his comments on this legislation that we are considering at the present time.

STATEMENT OF JACOB CLAYMAN, SECRETARY-TREASURER, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, ACCOMPANIED BY SHELDON W. SAMUELS, DIRECTOR, HEALTH, SAFETY AND ENVIRONMENT, AND HOWARD HAGUE, JR., ASSOCIATE LEGISLATIVE REPRESENTATIVE

Mr. CLAYMAN. Mr. Chairman, members of the committee, I have with me Sheldon Samuels, who is the director of our Health, Safety and Environment Department and Howard Hague, Jr., who is in our legislative department.

As you know, Mr. Chairman and members of the committee, we speak for the industrial union department of the AFL-CIO and I feel very sensitive this morning that you have a time problem and behind me waiting, probably patiently, is Jack Sheehan of the steel workers, so with your permission, I will state briefly the essence of our argument with the hope and expectation that the committee will read our statement carefully.

Mr. DANIELS. Mr. Clayman, I read your statement between 7 and 8 this morning so I am familiar with it. I will recommend my colleagues read your statement and will ask unanimous consent your statement will be placed in the record at this point.

[The statement of Jacob Clayman follows:]

PREPARED STATEMENT OF JACOB CLAYMAN, SECRETARY-TREASURER, INDUSTRIAL UNION DEPARTMENT, AFL-CIO

Mr. Chairman, I am accompanied this morning by Mr. Samuels and Mr. Hague of our staff. They have completed a study of consultative services on which we have based our testimony.

The issue before us is special treatment for small business and family farmers, an issue particularly troublesome to resolve, since those who claim to represent the "little guys" have only represented the organizational interests of the John Birch Society, the U.S. Chamber of Commerce, the National Federation of Independent Businessmen, and similar organizations.

Not so strangely, only the labor movement has pressed for funds and programs to assist the small operator who has neither the technical competency nor financial ability to resolve the incredibly complex problems of the work environment.

The Industrial Union Department went to the Congress in 1972 for funds for an OSHA small business education program. We supported the implementation of powers that NIOSH has for on-site consultation. We participated in the design of such services at the state level in Ohio and made that experience part of the demands of the industrial unions in New York, New Jersey and Pennsylvania. We supported university, community college and professional society efforts to provide services for small business.

We made this a major effort because most workers are employed in small shops and because conditions in these workplaces probably exceed in horror conditions found in most large industries. Mr. Chairman, you are responsible for disclosing a University of Washington study in Oregon and Washington that found one of four workers in the small businesses and farms surveyed to have an obvious occupational disease. Subtle diseases such as cancer were not studied. More, the researchers found a high incidence of uncooperative attitudes among these same employers.

These findings, in our experience, are universal and need national attention. But efforts for an effective attack on these problems have been made impossible by Washington's spring rite: the annual NIX ON OSHA Festival.

Myths and fictions about OSHA perpetuated in the Congressional Record, accompanied by an orchestrated mail deluge, panics the House into proposing to exempt from coverage small entrepreneurs or provides "a free bite" instead of first instance sanctions or "consultation" instead of an honest program of technological and financial extension to those that need help from expert educators and engineers, not from policemen.

Usually—with your help, Mr. Chairman—the Congress has stopped or ameliorated these crude actions, accomplished as amendments to appropriations bills that—ironically—could fund real assistance for the little fellow we pretend to fondle so carefully.

While the NIX ON OSHA coalition drains the energy and ability of the labor movement to protect largely unorganized workers—and employers—conditions worsen.

A recent pilot study of auto mechanics by the Mount Sinai School of Medicine found that in the process of maintaining brakes (which contain asbestos) workers were exposed to as much as 35 times the legal (inadequate) exposure to asbestos fibers. The consequence is that lung abnormalities of up to 38 percent were found. They reported four deaths from mesothelioma, a cancer almost always associated with asbestos exposure. The New York State Health Department reports an additional case and Dr. Thomas Mancuso of the University of Pittsburgh reports a case of mesothelioma who was a clutch repairman (friction clutches also contain asbestos).

These cases were not reported as the result of an organized search. No one is counting the bodies of exposed mechanics from the corner garage, or even of gas pump attendants exposed to ethylene dibromide, an halogenated hydrocarbon like vinyl chloride of liver cancer fame, which the National Cancer Institute has declared a carcinogen. Ethylene dibromide is a common gas and oil additive.

Another chemical in this family affects the neighborhood dry cleaner: trichloroethylene. Recent studies by NCI also have established this chemical as a carcinogen. Used widely, the exposed population includes your friendly rug merchant, dentist, business machine repairman, and about 300,000 others.

All of these hazards affect workers, employers, and—tragically—their offspring.

The organizations that claim to represent the little guy not only ignore this reality, but—worse—they actively oppose funds for environmental health research, education, enforcement and engineering studies. They oppose legislation—such as the Toxic Substances Act—which would provide for screening chemicals prior to their introduction into the workplace and the market, a process which would protect everyone. They don't have hundreds of millions invested in the use of unscreened chemicals such as trichloroethylene—like the little guy—which may have to be restricted in use—but they do represent the major producers and suppliers: Diamond Shamrock, Dow, Ethyl, Occidental and PPG

As we approach the fifth anniversary of the Act, OSHA is reaching maturity and becomes less like the political tool that characterized its earlier years. Letters from small businessmen that "the man from OSHA" and farmers that "the OSHA cowboy" will put them out of business are dropping in volume. This is not the time to obscure the real problems.

Small businessmen often have something legitimate to complain about. The standards that are creating the greatest problems for small business were developed in the language of the technicians of the major industries who dominate the private consensus standard-setting organizations.

Recently we learned that nearly every hard hat and about a third of the safety shoes required by OSHA do not meet OSHA standards because OSHA used private consensus standards that cannot be implemented by the manufacturers. Legally hundreds of thousands of employers are in violation of the Act. But they are not at fault. OSHA should be using the services of NIOSH to develop test procedures that work. It isn't practical to refer to standards which do not exist. (ANSI standard for hard hats refers to an ASTM flammability standard that does not exist.) No amount of "consultation" will solve that kind of problem.

To change the Act so that compliance officers must also be school teachers and social workers would create a conflict of interest. It would result in an impractical dilution of a meager enforcement effort. It asks for a double set of skills among mere humans who—like most of us—have difficulty mastering just one set of skills.

Perhaps the most important effect of mixing enforcement and consultation in the same agency is the climate it creates in the enforcement agency. We have a well documented example.

The hysteria about this issue does not go unnoticed in the field. In April, 1974, the OSHA area director for Columbus, Ohio, issued an order setting negative inspection quotas. Compliance officers were finding too many violations in certain workplaces. Therefore, establishments with 10 or fewer employees could not have citations issued with more than five violations. Establishments with 20 employees could have citations with 10 violations—up to a maximum of 40–60 violations for a large plant.

This was a well-publicized case. Mr. John Cope, formerly in charge of the 7(c)(1) and other OSHA programs in Ohio, testified on this example before this committee.

An investigator from the Assistant Secretary's office confirmed these findings—and more.

The investigation—still not made public—revealed that what was being done blatantly in Columbus was being done more subtly throughout the Chicago region.

Consultation, or technical assistance, has a role to play. But not in the enforcement process. Unless we are to repeat the discredited "voluntarism' exercised by the States prior to passage of the Act, technical assistance must be kept separate from the enforcement process itself. Not even the National Safety Council—a recognized advocate of voluntary compliance—recommends a return to the prior system in which consultation is the first step in enforcement.

Yet, we are for consultation. The question is what kind and how to provide it.

Last year, to satisfy our own need to know, we conducted a study whose summary and recommendations I would like to capsulize here, although Mr. Samuels and Mr. Hague are available to amplify any of the points I will make.

Our study covered on-site and off-site services provided by trade associations, professional and lay organizations, the Federal Government, State government and university extension services and educational programs. In-depth studies in Wisconsin and Colorado and a case study of resources in Ohio were made.

Trade associations are providing uneven coverage, but in great variety and often with detailed on-site assistance. Given the nature of these groups, we believe that they are responding to constituent demand for service.

No attempt was made to examine the quality of service. In terms of quantity, however, most of those surveyed were doing something substantial. If many were not providing direct or indirect on-site service, this is probably because of a lack of demand.

Professional and lay organizations are responding to the impact of OSHA in similar fashion. Active—and subsidized—promotion produces large numbers of attendees at OSHA-funded National Safety Council seminars.

Without promotion, the American Occupational Medical Association needs to provide very little. The hygienists and safety specialists, through their organizations, have organized referral services that literally "blanket" the Nation. They actively promote these services.

Each of these groups is free-standing and uncoordinated. Even the OSHA-funded programs are not related. Thus the seminars conducted by the American Industrial Hygiene Association are not related to the National Safety Council effort.

None of these programs as a group are at all related to Federal and State government consultative services. The AIHA services utilize university resources. However, the utilization is not systematized on any kind of State or regional basis.

The OSHA-funded community college experimental program was not studied, but we are unaware of any conscious relationship established between this program and any other.

The NIOSH activity has great promise. The difficulty is that here again the effort is free-standing, bashfully offered and painfully inadequate.

A long tradition (50 years), a corporal's guard of technicians and a handful of pamphlets and filmstrips do not make a serious effort.

The state governments in Wisconsin and Colorado may be able to develop effective on-site services. At the time of the study they were just becoming disentangled from the traditional programs and were adjusting to new enforcement roles. However, one thing is clear: any employer wanting consultative assistance could have it. The existing resources were under-utilized.

The pattern established in Ohio offered us a clear model for state-federal-private sector efforts. It was a clear break from the traditional, compromised state program in which enforcement and service are combined.

It is unfortunate that purely political circumstances have truncated most of that program. But the lesson was learned and it is worthwhile to reconstruct its elements here.

A "task force" had been established to coordinate the effort. A strong state government agency—freed of any enforcement responsibility—provided broad skills, facilities and funds for an aggressively promoted, wide array of field services closely coordinated with the federal government, the universities and other community resources.

The demise of the program (the "task force" no longer exists) teaches us that political continuity is a critical factor in terms of long-term viability.

Based on this study, we recommend the following:

To provide for political continuity and national coordination, a more positive federal role may be effective. Within the current law, OSHA has a mandate for systematic education. It is in the best position to pull together a national plan. When and where a federal on-site presence is needed, this can be accomplished by NIOSH. In any case, NIOSH can assist OSHA in the creation and implementation of a national pattern.

Full state and private sector participation—each element as an equal partner—is essential if this plan is to be effective.

The federal government does not have to invent a new way extending technology to solve the health and safety problems of small business. The National Academy of Sciences—in their recent report on toxic substances—has recommended to the Environmental Protection Agency the creation of a specialized service analogous to the agricultural extension program.

We make the same recommendation for consultative services under OSHA.

It is gratifying to note that all of this can be accomplished without altering a single word of the Act you co-authored. All that is needed is the will and the leadership. In fact, it can be accomplished under other legislation, such as under the Small Business Administration. The attitude of that agency proves our point. They have decided not to provide OSHA service regardless of a clear provision of their enabling Act mandating a role. They choose to remain in their primary role: economics and business promotion. They may be wise. Policemen make poor educators and promoters cannot police. The primary mission of an agency cannot be compromised with "sidelines" that dilute and alter their effectiveness.

We suggest, Mr. Chairman, that combining a consultative role with a police function means destroying the very Act your leadership made possible. It means reversing the beginning to an end to what you have so aptly described as a horror story.

A Profile of OSHA Consultative Services Available to Small Business

I. INTRODUCTION AND ACKNOWLEDGMENTS

Introduction

Criticism has been leveled in the Congress, in the press and in business and trade meetings at the Occupational Safety and Health Administration, at the standards it has promulgated and even at the basic enabling legislation. It has been said that the special educational problems of small business have been ignored, that opportunities for learning about how small businesses can comply with OSHA are inadequate, and that small businesses are unfairly treated if first instance sanctions are applied to them, instead of warnings and on-site consultation. The plea has been made for exceptions from coverage. In effect, additional education is being suggested in place of the present enforcement program, which already incorporates education and off-site consultation provided by OSHA, and on-site consultation provided by the Division of Technical Services of the National Institute for Occupational Safety and Health.

Organized labor has a specific self-interest in the ability of small business to understand and comply with OSHA regulation. Job safety and health hazards, particularly the latter, certainly occur no less frequently in "small business" establishments. Some evidence indicates a higher true rate of disease and injury. Consequently, our concern for the welfare of workers employed in such establishments is justifiably greater than it is in larger establishments where the presence of some kind of professionally organized and staffed safety and health program may provide a greater level of protection.

From the effective date of the Act, this department has suggested special programs for small business and requested funds for this purpose from the Congress. By contrast, representatives of small business are not known to have made comparable requests, although they have been vociferous in demanding protection from compliance for their constituents.

Relief for employees of small establishments through assistance to small businessmen with a sincere desire to define and solve their problems must be sought among the responsible organizations in the private and public sectors. Effective provision of assistance necessitates, however, the separation of myth from reality in regard to what is already available and in regard to the demand for additional services.

Acknowledgements

This study was designed by Sheldon W. Samuels, Director of Health, Safety and Environment, and largely conducted by Howard Hague, Assistant to the Secretary-Treasurer, of the Industrial Union Department. Nearly all the actual field work and much of the analysis and writing is the product of Mr. Hague during the calendar year 1974.

The authors met with a great deal of cooperation from professional staff in government and management too numerous to even list. Special mention must be made, however, of outstanding assistance from five in Ohio who made the key portion of this study both possible and fruitful: John Cope, former Deputy Director of the Ohio Department of Industrial Relations; Mr. Gary Brynner, former Superintendent of the Ohio Industrial Commission; Professors C. J. Slannicka and Harry Blaine of Ohio State University; and Mr. Joseph Velasquez, formerly with the DIR and now with the university.

The authors acknowledge with gratitude Mrs. Amy Krochmal, who not only can read our writing but who can have a sense of humor while understanding it.

Finally, we wish to point out that if it were not for the urging of Jack Sheehan, Legislative Director of the Steelworkers, and the patience of Secretary-Treasurer Jacob Clayman, the study would not have been attempted or completed.

II. RECOMMENDATIONS

To provide for political continuity and national coordination, a more positive federal role than has been exhibited to date may be effective. Within the current law, OSHA has a mandate for systematic education. It is in the best position to pull together a national plan. When and where federal on-site presence is needed, this can be accomplished by NIOSH. In any case, NIOSH can assist OSHA in the creation and implementation of a national pattern.

Full state and private sector participation—each element as an equal partner—is essential if this plan is to be effective.

The federal government does not have to invent a new way of extending technology to solve the health and safety problems of small business. The National Academy of Sciences—in their recent report on toxic substances—has recommended to the Environmental Protection Agency the creation of a specialized service analogous to the agricultural extension program.

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It is gratifying to note that all of this can be accomplished without altering a single word of the Act. All that is needed is the will and the leadership. In fact, it can be accomplished under other legislation, such as under the Small Business Administration. But that agency has decided not to provide OSHA service regardless of a clear provision of their enabling Act mandating a role. They choose to remain in their primary role: economics and business promotion. They may be wise. Policemen make poor educators and promoters cannot police. The primary mission of an agency should not be compromised with "sidelines" that dilute and alter their effectiveness.

Combining a consultative role with a police function means destroying the Occupational Safety and Health Act. Nor is there a great and real demand for consultative services. Yet they should be provided.

III. SCOPE AND METHOD OF INQUIRY

Prior Studies

Studies of the hazards in small business are few in number. No studies have been published which address themselves to the problem of remedy.

An occupational health survey of the Chicago metropolitan area completed by the predecessor agency to the National Institute for Occupational Safety and Health in 1970 demonstrated what can be found in small plants: the highest concentration of health hazards, the fewest safeguards and the least awareness on the part of management.

NIOSH recently completed a pilot study in Washington and Oregon which is noteworthy despite its preliminary nature. The University of Washington conducted the survey July 1972 through August 1974 in three industrial areas: Tacoma and Seattle, Washington, and Portland, Oregon; and an agricultural area: Yakima County, Washington. A board-qualified industrial physician participated in each of the cities.

Workplaces covered had from 8 to 150 workers (small businesses).

A walk-through survey by an industrial hygienist was conducted in 136 establishments. Questionnaires were given to the participating employees to determine their demographic, occupational and medical history. A medical examination was also given to 908 employees.

Compensation claims and employer injury and disease logs were reviewed for the period of the survey as well as one to one and a half years prior to the survey.

The workers studies were not subjected to extensive medical exams but rather to a limited physical examination and lab work. Cancer and neurological diseases, for example, were not thoroughly investigated. The survey, then, *understates* (as the study notes) the actual conditions that would be determined through a comprehensive investigation of worker health.

Some of the major findings:

Incidence of occupational disease is high: fully 28.4 workers with probable occupational disease per 100 workers—or 1 out of 4.

89 per cent of these workers with probable occupational disease were found *only* through the University of Washington's limited study. They were *not* on worker's compensation claims and were *not* reported on logs employers are required to keep under OSHA.

Employers provide few health services and little environmental or biological monitoring. Many were uncooperative in the study.

42 per cent of the job-related injuries were found *only* through the medical questionnaires. This indicates tremendous, *under-reporting of injuries* as well as disease.

The employer's log was not available at more than one-third of the establishments medically surveyed, supposedly because there was nothing to report. But *compensation claims were found for about half of these.*

The problem of remedy is much more difficult to define and plumb, especially by investigators outside of management circles.

Current Studies

A questionnaire was designed to provide an objective tool for assessing services provided by trade associations and to suggest questions for public sector agencies. In either case, it was apparent from the beginning that action was taking place both within the states and nationally. In administering the questionnaire and in personal contacts, the interviewers attempted to separate out major elements at both levels while maintaining recognition of the inextricable overlays that actually exist.

The result is a profile on what consultative services are available to business and industry to facilitate their compliance with the OSHAct. Is expertise and information available? What are some of the sources? These are the questions we will answer.

The scope of the study involved fifty trade associations, three states, various land grant colleges, the National Safety Council (locally and nationally), the American Occupational Medical Association, the American Society of Safety Engineers and the American Industrial Hygiene Association.

Because Ohio was the first state to develop an intense and broad program of consultative services entirely divorced from enforcement, that state was studied most intensely.

Deciding what *not* to study was not difficult.

Some professional societies have hesitated to become involved in service activities. Others have lent their expertise in support of consultation as a complement to Federal efforts, especially the American Society of Safety Engineers, the American Industrial Hygiene Association, and the American Occupational Medical Association. One of the largest societies, the American Public Health Association has exhibited a high level of concern over workers' health, but has not actively supported direct involvement of its state affiliates or organized its capacity in the national office. The newly-formed Society for Occupational and Environmental Health promises to be a valuable group in this area, but is not a significant source of assistance to small business at this time.

The dissemination of information about workplace hazards is the first step—logically—in improving the work environment in small shops. This includes information on how hazards can be recognized, monitored, and controlled and how the Act can be used to alleviate occupational health and safety problems.

Educational and information services have increased since the passage of the Act. Management groups, trade associations and insurance carriers have been the main providers of information and education for employers on their responsibilities under the Act. Organizations such as the Conference Board and the Industrial Health Foundation, however, disseminate the results of their research findings among their membership, comprised primarily of large companies. In 1971, the National Association of Manufacturers sponsored a nationwide closed-circuit teleconference on the Act's requirements that reached more than 10,000 executives of large and medium sized firms.

In addition to information and educational services, management is in need of technical and medical services and assistance.

A recent report to the Ford Foundation by Dr. Nicholas Ashford noted that, "Employers presently receive technical consultative services on occupational health and safety problems from three groups: private consulting firms, trade associations, and insurance carriers. In general these services are designed to minimize the financial burden on employers in their efforts to comply with the OSHAct. Large corporations are often able to obtain sufficient technical services from in-house safety, industrial hygiene, and medical capability. Law firms are also a potential source of both legal and technical advice, but their services are usually sought after an OSHA inspection has occurred. The smallest firms, however, do not have adequate access to either in-house or consultant expertise."

The larger insurance carriers generally provide the larger employers with assistance in the recognition and evaluation of risks and in loss control. Ashford notes that, "Because insurance services and policies are most responsive to the level of Workman's Compensation claims, where emphasis is on injury rather than disease, extensive occupational *health* services are generally not provided by carriers. In fact, the insurance industry is opposed to changes in Workman's Compensation laws that would extend coverage to occupational disease."

But for the small employer, carriers provide little service that can be objectively examined in a limited study of this kind. Therefore they were not included.

Also eliminated were the plethora of commercial services that became active with the passage of the Act, many of whom went out of business for lack of clients. It was felt that the most reputable would be—as they are—provided by the referral services of the professional societies.

The trade associations studied were selected on the following bases:

Geographic location. Those with main offices in the District of Columbia were preferred to assist contact. (Some were selected from other cities.)

A membership national in scope.

Representative of manufacturers (as opposed to construction or service contractors).

Included associations with both large and small numbers of affiliates.

For the purpose of a profile, this study selected three states: Colorado, Wisconsin and Ohio. They were selected on the basis of geographic, demographic and industrial differences. They are not typical states. But they also provide a spectrum. In each, the interviews looked at obvious and definable services regardless of source: state, federal or private sector.

IV. NATIONAL OVERLAY

A. Trade Associations

Fifty trade associations were surveyed (39 by phone and 11 by mail). Replies were received from 39. Of those responding, all but 7 were doing something substantial along the lines of occupational safety and health. This would indicate that 82 per cent of those responding were in some way involved in the field. All of the associations surveyed were involved in some form of manufacturing.

Membership Employment Range

Membership employment figures were not available from 16 respondents. Of those where figures (or estimates) were available (28 associations), 24 showed membership employing less than 25 workers. Only 4 associations reported that their membership were only large employers (over 500 employees).

Listed below are some interesting examples of employment range of various association members.

1. American Apparel Manufacturers Association, membership 750. About 50 per cent or 375 members employ less than 20 employees.

2. American Foundrymen's Society, membership 2,000. "Currently, there are approximately 4,500 foundries in the United States; 75 percent of the foundries employ fewer than 75 people. Almost all of the large foundries (that is to say, over 500) are captive," according to William B. Huelsen, Director Environmental Affairs.

3. National Paint and Coatings Association, membership 1,000. Only 20 employ over 500—the majority fall in the 50 employees and below category.

4. Printing Industries of America, membership 7,500. Eighty percent of membership employ fewer than 50 employees.

5. Marble Institute of America, membership 100. Employment size ranges from 3,500 employees to 5 employees.

From the above mentioned examples it is easy to see that many small employers belong to associations and thus have access to information regarding OSHA.

Educational Services

Educational services provided by the various associations include safety manuals, bulletins and newletters. Of those responding, 22 associations use bulletins or newsletters to alert their members of the legal aspects of the act, 24 for educational information regarding engineering and 20 with mention of medical problems.

Teaching materials were available from 16 responding associations concerning the legal aspects of OSHA; 19 made teaching material available on engineering and 15 on medical implications.

Seminars and Conferences

Since the passage of the OSHAct by Congress, 20 of the responding trade associations have conducted seminars and/or conferences solely on OSHA. 19 respondents have conducted seminars and/or conferences on OSHA in conjunction with other subjects. These meetings have been held on both the local/regional and national basis. Thirteen respondents stated that theirs were on a local/regional basis and 27 associations conducted theirs on a national level.

Technical Assistants

A. Engineering.—Of the associations surveyed and responding, 10 gave on-site assistance; 15 helped by phone; 23 associations offered assistance through the mail; and 22 used the group or committee form in lending engineering assistance on a technical basis.

B. Medical.—Medical assistance on a detailed basis was available to members on an on-site basis from 6 associations; 11 associations lent aid by phone; 19 associations used the mail; and 16 used groups or committees in lending detailed medical assistance.

C. Legal.—Technical assistance available on the legal aspects of the OSHAct from the various associations are as follows: on site, 8 associations; telephone, 17 associations; mail, 23 associations; group or committee, 17 associations.

It is important to comment on the reasons given why 7 associations were doing nothing substantial for their membership regarding OSHA.

1. National Forest Products Association. Mr. Hitchings stated that this is a Federation of Associations and that they rely on their member associations to perform this service.

2. National Coal Association. Mr. Foster indicated that their primary concern was with the Mine Safety Act. Only clerical and sales personnel were covered by OSHA.

3. American Dye Manufacturers Institute—only legal counsel.

4. American Petroleum Refiners Association—only legal counsel.

5. Independent Refiners Association of America—only legal counsel.

6. American Gear Manufacturers Association. Mr. Engram stated that the association and members rely on their insurance companies to deal with occupa-

tional safety and health problems. This is done by calling in the insurance company on the plant level for whatever assistance is needed.

7. Aerospace Industries Association of America, membership 50. The membership of this association is very large employers who do not rely on the Association for OSHA information.

Other sources and methods of OSHA assistance utilized by Trade Associations

1. Society of the Plastics Industry, membership 1200. According to Mr. J. P. Carroll, should a problem arise that cannot be answered by the Society, the name of a consultant will be supplied. The Society has a safety committee, a safety handbook and an OSHA kit.

2. Marble Institute of America, membership 100. The Marble Institute has established a committee to draw up a safety manual along the lines of the National Traza and Mosaic Institute manual.

3. Refractories Institute, membership 86. They conduct "factory operators meetings" for the purpose of sharing information among the various members.

4. Rubber Manufacturers Association, membership 170. They are in the process of compiling a manual. Technical assistance is on a committee basis.

5. Printing Industries of America, membership 7,500. This association has a man on the road constantly, making informal inspections and lending assistance. They also have a safety manual.

6. National Petroleum Refiners Association, membership 107. The NPRA conducts a continuous program of plant visitations to bring their membership up to date on regulations.

7. National Paint and Coatings Association, membership 1000. In January, 1974 they conducted a program in Chicago on "How to build a paint plant."

8. National Machine Tool Builders Association, membership 300. In January they began a safety and health news letter.

9. National Canners Association, membership 500. Mr. Labred said he feels that there is plenty of expertise in the field citing the NSC and OSHA training programs.

10. National Association of Food and Dairy Equipment Manufacturers, membership 400. This association employs a service organization which sends data on safety and health imprinted on their letterhead.

11. Industrial Heating Equipment Association, membership 50. Are in the process of compiling a manual with a section on OSHA.

12. Industrial Fasteners Institute, membership 55. The Industrial Fasteners Institute utilizes the "pooling of information" method from various members.

13. Hardwood Plywood Manufacturers Association, membership 100. They have "Department of Labor personnel visit their plants on a courtesy inspection basis." (We assume they refer to state, not federal personnel.)

14. Farm and Industrial Equipment Institute, membership 390. FIEI has developed a "complete safety system" through the National Safety Council.

15. Electronics Industries Association, membership 250. Occupational safety and health problems are discussed among their various members and the Chamber of Commerce.

16. Material Handling Institute, membership 14. Printed material on safety is distributed to its members at their annual national show.

17. Composite Can and Tube Institute, membership 55. Uses National Safety Council materials.

18. American Road Builders Association, membership 5,000. They interpret the law for their members.

19. American Petroleum Institute, membership 8,000. Dr. Weaver described the institute as a "clearing house of information".

20. American Hot Dip Galvanizers Association, membership 75. Mr. Lloyd stated that the association mailed the findings of other groups to the membership. They had discussed the production of a safety manual with a research firm but decided it would be too expensive.

21. American Coke and Coal Chemical Institute, membership 35. The institute does not publish, but works through committees on an information pooling basis.

22. American Apparel Manufacturers Association, membership 750. The association provides detailed medical assistance to its members through affiliation with an advisory group—the Health Environment Group.

23. American Foundrymen's Society, membership 2000 corporations. "The American Foundrymen's Society has been active in promoting occupational safety and health since 1914, and we have had full-time staff working in this field

since 1935. A great deal of the technical information available for controlling foundry environmental problems has been developed by our technical committees. All of this material has been published and is available through AFS . . ." William B. Huelsen, Director Environmental Affairs.

24. Steel Plate Fabricators Association, membership 66. "Our safety and health committee meets approximately four times a year to discuss all aspects of safety . . ." Earl A. Bratton, Executive Director.

From the above 24 examples one can see the many and varied methods with which the Manufacturing Associations offer assistance to their members so that they may comply with the OSHAct. Obviously, the associations on a whole are performing in the field.

A great deal of information and expertise is available through these associations. The potential for service is dictated by demand of members.

Field Service and Educational Survey

(Questionnaire)

Name of organization:
Description of primary activity:
Geographic distribution:
Number of companies serviced monthly:
Size of company (range, size specific):

Over 500	4
Less than 500	
Less than 100	
Less than 50 [1]	
Less than 25 [2]	24

[Refused or did not know: 16; No replies: 6.]

OSHA services

Educational:	
Bulletins:	
Legal	22
Engineering	24
Medical	20
Teaching materials:	
Legal	16
Engineering	19
Medical	15
Seminars and conferences:	
Solely on OSHA	20
In conjunction with other subjects	19
Locally and regionally or nationally or both:	
Local/regional	13
National	27
Technical:	
Engineering:	
On site	10
Telephone	15
Mail	23
Group	22
Medical:	
On site	6
Telephone	11
Mail	19
Group	16
Legal:	
On site	8
Telephone	17
Mail	23
Group	17

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[1] Printing Industries Association. 80 percent under 50 employees.

[2] American Apparel Manufacturing Association, 375 of 750 under 20 employees.

By phone:

- Aerospace Industries Association of America.
- American Apparel Manufacturers Association.
- American Coke and Coal Chemical Institute.
- American Die Casting Institute.
- American Dye Manufacturers Institute.
- American Gear Manufacturers Association.
- American Hot Dip Galvanizers Association.
- American Iron and Steel Institute.
- American Petroleum Institute.
- American Petroleum Refiners Association.
- American Road Builders Association.
- Can Manufacturers Institute.
- Composite can and Tube Institute.
- Material Handling Institute.
- Drug, Chemical and Allied Trades Association.
- Electronics Industries Association.
- Farm and Industrial Equipment Institute.
- Foundry Supply Manufacturers Group.
- Hardwood Plywood Manufacturers Association.
- Independent Refiners Association of America.
- Industrial Fasteners Institute.
- Industrial Heating Equipment Association.
- Lead Industries Association.
- Manufacturing Chemists Association.
- Marble Institute of America.
- National Association of Food and Dairy Equipment Manufacturers.
- National Canners Association.
- National Coal Association.
- National Forest Products Association.
- National Machine Tool Builders' Association.
- National Paint and Coating Association.
- National Petroleum Refiners Association.
- Printing Industries of America.
- Rubber Manufacturers Association.
- Refractories Institute.
- Society of the Plastics Industry.
- Shipbuilders Council of America.
- Specialty Wire Association.
- Wire Reinforcement Institute.

By mail:	*Reply received*
American Foundrymen's Society	Yes.
American Meat Institute	Yes.
American Mining Congress	
Engine Manufacturers Association	
Fibre Box Association	
Forging Industry Association	Yes.
Institute of Scrap Iron and Steel	Yes.
National Corrugated Steel Pipe Association	
Pharmaceutical Manufacturers Association	
Steel Plate Fabricators Association	Yes.
Welded Steel Tube Institute	

B. Professional and Lay Organizations

American Occupational Medical Association

The Industrial Medical Association provides consultative services through a special committee. If they receive a written request for information which could be answered simply, they will do so. If it is an involved problem and on-site visitation is deemed necessary, members of the committee in all probability may be able to recommend someone. They did not at the time of the study have a formalized list of consultants.

The AOMA does not certify individuals. However, they do have a fellows program. To be a fellow requires continuing study.

The Association is comprised of 29 "components" covering the entire United States with the exception of parts of Arkansas and Oklahoma. Their office in Chicago is administrative—any question or request for assistance would be passed to their Industrial Medical Practices Committee.

The National Safety Council

On contract from OSHA, the National Safety Council conducted the federal government's largest educational effort: a $3 million program aimed at assisting small business at the local level through seminars conducted by their affiliates. An unsuccessful attempt has been made to also involve the labor community in the same program of one- to four-day seminars.

The goal of the two-year program, now ended, was 100,000 attendees. A final report has not been received at this writing, but preliminary indications are that ties with manufacturers associations and local chambers of commerce have placed a significant barrier in the way of anticipated success. Highly dependent on the meager and often unskilled local resources of 39 local NSC affiliates, there may be little to show for the effort. There is not a well organized referral service.

American Industrial Hygiene Association

This organization has a contract for conducting intensive seminars at selected universities in problems of industrial hygiene. Aside from this effort, they maintain a list of about 100 consultants available for on-site consultation, most of whom have been certified by the American Board of Industrial Hygiene. Assistance may also be sought through 30 chapters covering all of the United States.

American Society for Safety Engineers

This organization also provides a nationwide referral system through its Consultants Division. A directory with approximately 150 consultants listed is available with detailed description of qualifications. Most have Certified Safety Profession or Certified Industrial Hygienist or Professional Engineer or equivalent status. Their 94 chapters blanket the country. Effort made to maintain standards of ethical and professional conduct.

C. OSHA and NIOSH

The Occupational Safety and Health Administration maintains telephone, mail and office consultation through its regional and area offices in every state. It provides training facilities for state consultation programs as well as federal funds both for states with enforcement programs and states without enforcement programs. Speakers, pamphlets, a monthly magazine and visual aids are also available as well as a loose-leaf service detailing standards, procedures and methods of compliance.

NIOSH and its predecessor organizations have been in the consultation business for about 60 years. The legislative history and the Act itself are oriented to reinforce a scheme in which OSHA "enforces" and NIOSH does research and consultation.

In the training area, OSHA provides non-reimbursable compliance-type training and NIOSH (by OMB directive) provides reimbursable technical training. Because of costs, the small businesses which need NIOSH training, a form of consultation, can't afford it. The mix of persons trained has changed from small business personnel to larger business personnel.

Despite limited resources NIOSH has been producing health and safety guides, good practice manuals and film strips.

In 1974 about 150 on-site consultations were performed by the engineers and hygienists in the Small Business Consultation Section of the Division of Technical Services. No requests were turned down, but there has been virtually no promotion of this service, which is obtainable through ten regional offices.

NIOSH anticipates an expansion of this service, in part through traditional ties with State Health Departments.

NIOSH HEALTH AND SAFETY GUIDES

Already published and distributed: Bulk Petroleum Plants, Grocery Stores, Retail Bakeries, Auto Body and Repair Shops, Service Stations, Grain Mills, Sporting Goods Stores, Lumber and Building Materials.

At printers and should be distributed during fiscal year 1976: Electro-plating Shops, Plastic Fabricators, Fluid Milk Processors, Laundries and Dry Cleaners, Printing Industry, Bottled and Canned Soft Drinks, Food Processors, Wooden Furniture Manufacturers, Metal Stampings, Paint and Allied Products Manufacturers, Concrete Products, Paperboard Containers and Boxes.

NIOSH MANUALS OF GOOD PRACTICE FOR WORKERS (USEFUL TO SMALL BUSINESS)

None as yet published and distributed; however three (3) are being printed at the present time.

How to Get Along with Solvents.
Caution—Inorganic Metal Cleaners Can Be Dangerous.
Working Safely with Pesticides.

The following are being written and edited:

Battery Workers—Prescription for Safety.
Good Industrial Hygiene Practices for Printing Industry.
Health and Safety Guide for Spray Painting.
Welding.
Fibrous Glass Layups.
Insulation Installation.
Mechanical Finishing.
Rendering.
Epoxy Resin Processing.
Tanning.
Auto Body Repair.
Textile Dying.
Bulk Pesticide Application.
Polyrethane Foaming.
Electroplating.
Soldering and Brazing.

NIOSH TECHNICAL CONSULTATION ANTICIPATED IN FISCAL YEAR 1976[1]

	Man-years	Total funds (thousands)
Direct consultation services (includes 10 man-years of regional activity)	30	$883
Indirect consultation (includes technical information, laboratory services, safety, etc.)	31	1,943
Health hazard evaluations	34	1,014
Total	95	3,840

[1] This represents about 10 percent of the NIOSH anticipated budget.

V. STATE OVERLAY

A. Traditional State Programs

The states bore the bulk of responsibility in occupational safety and health prior to the passage of the Act.

The earliest and best-known battles for workplace protection were fought over the removal of children from factories and the protection of women in the plant. The priority was justified then as it is today: witness the use of women and children in agriculture. But often overlooked is the broader struggle that resulted even in the 1840's in court decisions that gained recognition of a worker's right to a safe workplace, safe tools, safe rules of conduct and warnings of special dangers. These were rights contested in the slow process of attaining the passage of state factory laws. In Massachusetts a report on occupational hazards was written in 1837. But passage of a safety law did not take place until 1877. Even today no state covers all workplace hazards.

Without question the early state programs, given the circumstances of the day, resulted in great strides forward. The virtual elimination of the factory as a breeding ground for contagious diseases such as tuberculosis represented a great achievement in the practice of public health. Progress was made in the provision of mechanical safety devices on machines and assembly lines.

With the passage of workmen's compensation laws and a series of court decisions broadening the scope of an employer's responsibilities for maintaining a hazard-free workplace, management began intense programs to reduce accident rates and insurance premiums. These programs concentrate on a limited number of hazards that manifest themselves over a short period of time, ignoring the prevention of diseases that develop over long time spans. State programs reflected management priorities. They were often divided so that the agency with primary responsibility handled management's top priority: "safety." Health problems were often handled separately by State Health Departments, who were assisted by the United States Public Health Service.

The consequence has been the inauguration of "safety" programs that largely ignore the health effects of exposure to toxic substances, harmful physical agents and unsanitary eating and clean-up facilities. This is particularly true of effects difficult to relate in a court of law to a specific work situation.

- This resulted in "education" campaigns which, though puerile and ineffective as methods of reducing accidents, were far from harmless.

At the same time that these "safety" programs reached their height, in the 20 years following World War II, many states began to experience a reduced rate of industrial expansion. The few effective state programs increasingly were perverted from enforcement to technical and "educational" services—often on-site—whose primary mission was to aid the commercial development of the state. They often attempted to mimic extension services in other sectors. The successful services had no ties with enforcement—as in agriculture.

Even in the face of vast technological changes in the workplace, state laws and regulations remained largely unchanged. While new industries introduced unmonitored substances and agents into the workplace every 20 minutes, standards were developed to control only a few hundred of the roughly 12,000 chemical and physical hazards to which the worker is known to be exposed. Citations and court action were replaced by "conference, conciliation and persuasion." Meager gains made at the turn of the century were lost. Professions created to protect the workplace dropped to the lowest levels of prestige and remuneration. Competent men and women became demoralized and left the field. While most areas of government grew tremendously in the states during this period of time, often faster than in federal or local government, most occupational safety and health programs atrophied. In 1968 the states employed fewer than 1,000 "inspectors" to cover all workplaces.

These inspectors failed to provide either good enforcement or good education and technical services.

Thus, historically, the barrier to action by government has been formidable.

The long, unsatisfactory experience of depending on the states to protect the workplace did not lead to a total rejection by organized labor of the state role.

B. Colorado

Jerome J. Williams, Area Director OSHA, was interviewed. OSHA became a state program on March 1, 1974 and is commonly referred to as OOSH. Prior to the state take-over, Mr. Williams' area of responsibility was Colorado and Wyoming. His staff consists of one (1) Industrial Hygienist and five (5) Compliance Officers. It was estimated that each of these six (6) individuals could inspect sixteen (16) business establishments per month. This figure indicates 96 establishments per month and 1,152 per year. By actual count 916 business establishments were inspected in 1973; for January 1974, 80 establishments were inspected. Standard Department of Labor publications and information available, but this resource was being phased out.

Greg Rogers, Director, Colorado Occupational Safety and Health Administration, was interviewed. At the time of interview, the program had been in existence only four (4) days. OOSH intends to hire 24 qualified inspectors in 1974 and an additional 24 in 1975. They are projecting 50–100 inspections per week. The state program provides a "technical assistance" staff of twelve (12). Six (6) make courtesy inspections and the remaining six (6) conduct educational seminars. Supposedly the technical assistance staff and the compliance officers will not have access to each other's information. OOSH has a library and films are available upon request. Educational seminars are planned. Standard U.S. Department of Labor publications and information available.

Richard Ayers, Director of the Colorado Safety Association (a part of the Denver Chamber of Commerce) was interviewed. Membership 340. The Colorado Safety Council has full library services from the National Safety Council. Under the grant from the Department of Labor nine orientation courses have been conducted with a total enrollment of 804. Of this total 10 percent were employee representatives and 90 percent employer representatives. In May 1974, the Colorado Safety Council plans to conduct an all-employee orientation program. This Safety Council has two industrial safety engineers on its staff. A publicity campaign has been conducted and pinpoint mailing program to employers is in operation to heighten the awareness of OSHA. Mr. Ayers stated that the Council has a good working relationship with ASSE and that adequate information is available. Plans for use of Department of Labor grant ($60 million):

20—one-day orientation course (nine completed).
4—one-day trenching and excavation course.
4—one-day health and safety course.
4—four-day voluntary compliance course.

Curtis Foster, Regional Director, OSHA, was interviewed. During the course of the interview we were joined by Mr. Stanley J. Reno, Regional Program Director of NIOSH and his assistant. Since OSHA has been taken over by the state, the federal OSHA people are acting in an overseer capacity. They hope to see the state inspect "Target Industries" annually (meat packing; lumber and wood; trenching, etc.) and all other industry at least once every five years. Both Mr. Foster and Mr. Reno felt that there was ample information available for employers to comply. It was stated that the following associations are actively involved in assistance to members and in the publication of data (Associated General Contractors, Western Wood Products, Timber Products Manufacturers, and Mountain States Employers Council).

The unanimous consensus among all interviewed is that the information is there for anyone willing to take some initiative. There is assistance available from the State Health Department, the Colorado Safety Council, various business and manufacturing associations, and NIOSH. There may be an estimated 400 to 500 "consultants" in the State of Colorado in the field. Data as to their adequacy was not available. This does *not* count resources that may be available in the state's colleges (not included in the survey).

C. Wisconsin

William Redmond, Executive Director of the Wisconsin Council of Safety, was interviewed. Membership: approximately 500. It operates under the umbrella of the Wisconsin Manufacturing Association, composed of 1,350 members. Mr. Redmond stated that the WCS has in operation an "OSHA Hot Line" open to calls from anyone concerning all aspects of the Act. If they don't have the answer, they will make the effort to find it. One source they use in getting information is the State Health Department. The WCS has full library services of the National Safety Council. The Wisconsin Council is conducting a campaign by mail to alert those covered by the Act of its existence. The yellow pages of the phone book is their mailing list.

It was stated that the goal of the Council, with regard to the Department of Labor grant, was to reach the small employer (under 500 employees). To date 92½ percent of the businessmen attending the orientation course have fallen into this range.

Beginning September 24, 1973, to date, the WCS has conducted 31 orientation courses and has plans for at least 15 more. The number of people trained in the orientation course to date is 2,402, averaging 80 per course. Other planned courses under the DOL grant:

30 trenching and excavation (one day).
30 safety and health (one day).
7 voluntary compliance (four day).

The Wisconsin Council of Safety feels that there is adequate information and assistance available.

John Zinos, Commissioner, Industrial Safety and Buildings; Lawless L. Mollere, Chief, Bureau of Inspectors; Edward Otterson, Chief, Section of Occupational Health; and Dr. George Handy, State Medical Director were interviewed. The State of Wisconsin has approximately 80,000 businesses covered by OSHA, employing two million workers. There are 116 inspectors in the state with a legal support staff numbering 21. It is estimated by Mr. Mollere that each inspector should inspect a minimum of two businesses per day. This would indicate that approximately 4,640 businesses would be inspected each month. According to this estimate each business establishment should be inspected once every two years. Courtesy inspections and technical assistance are available from the state if this assistance cannot be obtained elsewhere. There are staff and laboratory facilities available for medical and scientific evaluation of particular problems in industry.

The Wisconsin Department of Health and Social Services has written a manual on the *Control of Hazardous Industrial Noise Exposure* as well as an *Occupational Health Guide for Medical and Nursing Personnel.* Mr. Otterson stated that the Employers Mutual of Wausaw and the Century Insurance Company are doing a great deal of work in occupational safety and health. The state people do not feel that there is adequate information and assistance available. However, this statement was always accompanied by a plea for more money. They feel the problem is the lack of a decision as to whether OSHA will remain federal or go state. There are the usual Department of Labor materials and information available.

Charles Dorgan, Professor, Department of Engineering, University of Wisconsin, Extension, was interviewed. The Department of Engineering conducts two-day courses relating directly and indirectly to occupational safety and health.

One course directly related covers the background history and current status of the OSHAct. Specific topics covered are: (1) Management for OSHA, (2) Temperature Stress, (3) Ventilation, (4) Industrial Hygiene, (5) Noise, (6) Other hazard/safety topics as time allows.

Other courses offered relating to safety and health are:

1. Blasting Considerations and Techniques for Construction.
2. Sewage Pumping Station Design.
3. Industrial Electrical Design.
4. Industrial Electrical Safety.
5. Crane Failures.
6. Occupational Safety and Health for Industry.
7. Construction Safety.
8. Noise Control in Industry (A Practical Approach).
9. Safety in the Chemical Process Industries.
10. Health and Safety in the Industrial Plants.
11. Automation of Manual Manufacturing Operations.
12. Recent Advances in Workplace Design.
13. Meeting Product Noise Limits—A Design Approach.
14. Occupational Safety and Health Administration.
15. Solving Problems Related to Occupational Safety and Health.
16. Fast Breeder Reactor Safety.

Mr. Dorgan stated that the students attending the Safety and Health courses are safety men from large corporations. He or someone on the staff may from time to time visit a plant to help in solving a particular problem; however they receive criticism from other professionals as unfair competition when fees are not charged. They can recommend qualified help when needed.

An interview was not conducted in the Federal OSHA office.

D. Ohio

State Government

The State of Ohio was looked at in the greatest depth. Its government provided the most extensive services and personnel to industry in the field of occupational safety and health. It provided the only planned and successfully integrated consultative program in the United States. As Mr. Bryner, former Superintendent, Industrial Commission of Ohio, stated, "The commission in essence provides a 'safety man free of cost.'" The material that follows was prepared for this study by state personnel and verified by IUD staff.

In essence the Ohio data shows that even when actively promoted and offered free, few employers and very few small employers avail themselves of these services.

Division of Safety and Hygiene's legal mandate as contained in Article 11, Section 35 Constitute of Ohio "for the investigation and prevention of industrial accidents and diseases". This legal mandate is carried out through the following means:

(1) Industrial Field Service Department

A. B. Maines, Supervisor, plus nineteen (19) field men. Three (3) District Supervisors and sixteen (16) Safety Advisors. This department conducts safety inspections with follow-up recheck visits. Deviations from IC–5 code are written up on survey form and given to employers as violations of State safety requirements. In addition they make accident investigations of fatal and severe amputation injuries.

(2) Construction Field Service Department

Zane Mickey, Supervisor, plus nineteen (19) field men. Sixteen (16) men plus three (3) District Supervisors. This department inspects construction job sites throughout Ohio using the Construction Code IC–3 as their criterion. They also conduct accident investigations of fatal and severe injuries.

(3) Business and Public Agencies Department

William Brumback, Supervisor, plus Sixteen (16) field personnel. Two (2) District Supervisors plus fourteen (14) Safety Advisors. This department inspects to Ohio employers other than manufacturing and construction contractors. They also make accident investigations for the purpose of finding the causes so a recurrence of a similar accident type may be prevented.

(4) Engineering and Industrial Hygiene Department

DeWitt Huffman, P.E., plus four (4) professional engineers staff this department. Functions:

(*a*) *Engineering.*—They assist in complex problems of machine guarding and other engineering areas like structural, chemical and civil engineering situations.

(*b*) *Industrial Hygiene Engineering.*—This department makes surveys of plants and other work places to determine if there is a health hazard; taking and testing samples when necessary. After recognizing and evaluating the health hazards, they send control solutions to the applicant employer.

(*5*) *Statistical Department*

Frank Spanable, Chief Statistician, heads up this department of sixteen (16) employees. They collect and compile data from Workmen's Compensation claims and man-hour report from employers. This information is used to figure frequency and severity rates so comparisons may be made of other times and places to show growth trends. Statistical and Cost Analysis reports for separate industries and individual employers. This gathered information gives to those concerned the dimensions of their injury problems, i.e. What it is, Where it is, When for the latest five (5) year period, how it happened by accident types and the economic losses by way of increased premiums which is a mirror image of accident losses sustained.

(*6*) *Safety Training Department and Film Library*

A. W. Meanor is Supervisor with two (2) employees. Supervisors Safety Training Course (12 session-14 subject course) is given to applicant employers and also a 'Train the Trainer' week-long course given in Columbus, Ohio three (3) times a year. Training Department handles all training resources except the manpower resource. Instructors are competent field personnel from the Industrial and BPA Departments.

(*7*) *Safety Director Program Department*

Charles Campbell heads up this department in a staff function with manpower resources provided by Industrial and BPA departments. Small employers (under 500 employees) with heavy injury losses can enlist the services of the Safety Director Department. It is an optional service with mandatory elements. A competent Safety Advisor is assigned to a company with Top Management, Supervision and employees organized in a joint venture to materially reduce the human and economic losses.

(*8*) *Safety Campaigns-Awards and Ohio Safety Congress*

Robert Riley is Supervisor in a staff function. See "The Challenge" for particular details.

(*9*) *Publications Department*

William Coulter is Director of Publications and he has nineteen (19) employees. See "Challenge" for duties as Shipping Department, Art Department, Photographer Department, Printing Department. In addition, this department creates, develops, produces and distributes specific accident prevention programs for Ohio Employers. They are "Pattern for Progress for Manufacturing", "Cisco for Construction Industry", "Road Map for Safety for Motor Carriers", "Tree of Life for Horticultural Industry", Programs for the Foundry, Restaurant and school shop safety industries.

The Supervisors of Departments listed above compose the executive Staff along with Gary B. Bryner, Superintendent and William Murphy, Asst. Superintendent.

INTER-OFFICE COMMUNICATION

To: Howard R. Hague, Jr. MARCH 7, 1974.
From: Gary B. Bryner.
Subject: Number of companies serviced monthly.

Industrial field services department	1,500
Construction field services department	1,702
Business and public agencies department	1,678
Engineering and industrial hygiene department	30
Publication department (See attached. (#1)).	
Training department (See attached. (#2)).	
Size of companies in the State of Ohio:	
Over 500	730
Less than 500	181,845
Less than 100	178,010
Less than 50	173,081
Less than 20	159,205

The above information is the estimate from the Bureau of Employment Services for 1973.

Publications number distributed/per year

Monitor	2, 400, 000
Pattern for Progress (For Manufacture type businesses):	
(a) Safety talk guides	100, 000
(b) Supervisors check lists	100, 000
(c) Posters (monthly)	960, 000
(d) Streamers (monthly)	660, 000
(e) Supervisors wall calendars	100, 000
(f) Employees reminder calendars	6, 600, 000
(g) Supervisors booklets (average)	100, 000
CISCO:	
For construction industry, on specific order:	
18 different craft safety rule books (average of each)	15, 000
General management books	7, 000
Construction wall calendars for supervisors	30, 000
Employee reminder calendars	350, 000
Hard hat decals	100, 000
Crane signal card and/or posters	10, 000
18 posters (adhesive) all different	20, 000
Warning stickers (4 different) that is, guard rails, ladders, lockout, welding tank stickers (each)	25, 000
4 streamers all different 30 inches by 10 inches	10, 000
Roadmap for motor carrier safety (truckers and dock workers):	
Safety talk guide	8, 000
12 posters	960, 000
Employee reminders	1, 800, 000
Supervisors wall calendars	10, 000
Stickers, dash board	720, 000
Special warning stickers (average)	20, 000
Safety spots for broadcasters (radio and TV) (for all employees):	
Safety rule books	2, 500
Warning stickers	25, 000
Posters	24, 000
Studio capacity	400
TV BOOM	3, 000
TV boom	3, 000
Cable tents	10, 000
Serving safety for restaurants (on specific order):	
Safety talk guides	20, 000
Posters	100, 000
Tree of life safety program for arboricultural businesses (on specific order):	
Safety talk guides (covers 5 manual numbers)	2, 500
Posters (adhesive)	50, 000
Warning stickers (adhesive)	25, 000
School shop safety manuals—educational booklets (average)	4, 000
Industrial good housekeeping	5, 000
Foresight for Eyesight	5, 000
Fire Safety in the Small Industrial Plant	5, 000
Hand Tools	5, 000
How To Work Safely With Air-Powered Tools	5, 000
Welding With Safety	5, 000
Guide to Safe Operation of Woodworking Machinery	5, 000
Safety in the Manual Handling of Materials	5, 000
Safety in the Operation of Powered Industrial Trucks	5, 000
Specialty printed materials such as:	
Emergency telephone stickers, artificial respiration, crane signals, Warning stickers, and so forth (average total)	200, 000

A new specific Foundry Safety Program is being developed and will be ready about April or May.

None of the above includes administrative forms, either internal or external, nor any display work, fair trailer or Congress decorations, etc., which we do.

Respectfully submitted,

William S. Coulter,
Supervisor of Publications.

	1971	1972	1973
Number of training courses given	91	113	90
Number of separate classes in the courses given	100	107	111
Number of individual employers served	104	132	117
Number of Ohio supervisors who received the 12-session supervisors safety training course	2,659	2,699	2,735
Number of men from private industry trained in our weeklong "train the trainer" instructors training conference	90	90	40
Number of employers assisted in training their forklift operators		195	335
Number of forklift operators trained (total)			7,944

APRIL 4, 1974.

Recapitulation of 273 questionnaires, directed to health laboratories throughout the State of Ohio, to determine laboratory capabilities related to Occupational Health.

Totals listed under each item number indicates total number of participating laboratories performing that particular service.

4. Do you employ the following analytical equipment?

1. Gas chromatography	39
2. Atomic Absorption	46
3. X-ray diffraction	7
4. Auto analyzer	112
5. Mass spectrometer	13
6. Electron Microscope	15
7. Other	89

5. From whom do you receive samples and specimens?

1. Safety Personnel	21
2. Industrial Hygiene Personnel	26
3. Physicians	226
4. Other Laboratories	81
5. Industry (control of industrial processes)	34
6. Other	87

6. To the best of your knowledge, what is the major reason samples are sent to you for analysis?

1. Process (Production) evaluation and control	25
2. Environmental air or water pollution evaluation or control	28
3. Workplace (industrial hygiene) evaluation or control	19
4. Medical	239
5. Other (specify)	19

7. Do you perform analyses of:

1. Biological specimens	211
2. Water samples	51
3. Air Samples	19
4. Other (specify)	50

8. Do you perform the following clinical hematology or chemistry analyses?

	Routinely	Occasionally	Never	Planned for future
Blood/serum:				
01. Hemoglobin	235	5	18	1
02. Hematocrit	234	4	18	1
03. White blood cell count	234	5	18	1
04. Differential	234	4	19	1
05. Sugar	233	7	18	1
06. BUN	223	12	22	1
07. SGOT	200	19	28	1
08. SGPT	181	29	32	1
09. LDH	191	18	34	1
10. CPK	164	23	44	4
Urine:				
11. Sugar	235	6	18	1
12. Acetone	226	10	20	1
13. Protein	234	6	18	1
14. Microscopic	235	4	18	2

9. Do you perform the following analyses which may be used as biological screening tests for hazardous exposures in the workplace?

	Routinely	Occasionally	Never	Planned for future
01. Blood lead	13	30	166	20
02. Urine lead	11	31	164	21
03. Urine-ALA	9	12	176	17
04. Blood mercury	7	12	184	14
05. Urine mercury	8	17	180	15
06. Blood carboxyhemoglobin	16	40	152	14
07. Blood arsenic	7	14	182	15
08. Urine arsenic	9	18	179	15
09. Urine thallium	2	4	193	9
10. Urine phenol	4	3	194	9
11. Urine fluoride	4	4	190	10
12. Red cell cholinesterase	7	17	175	18
13. Plasma cholinesterase	15	24	163	22
14. Other (specify)	1	4	93	3

10. The following questions relate to analysis of industrial hygiene samples:

	Yes (1)	No (2)
Do you collect air (atmospheric) samples, or make field measurements?	16	219
Do you provide clients with air sampling instruments?	8	227

11. Do you specifically analyze or evaluate:

	Routinely (1)	Occasionally (2)	Never (3)	Planned for future (4)
Filter samples for:				
01. Total dust	8	6	200	2
02. Silica dust	6	7	200	3
03. Asbestos fibers	5	6	201	5
04. Cotton dust	3	5	202	4
05. Lead	7	12	194	4
06. Other heavy metals	7	13	190	5
07. Beryllium	5	7	196	5
08. Oil mists	4	5	200	4
09. Fluorides	5	9	196	4
10. Coal tar pitch volatiles	3	4	199	7
11. Charcoal tubes for organic solvent vapors	3	6	199	5
Impinger samples for:				
12. Diisocyanates (TDI, MDI and others)	4	2	201	5
13. Acid mists	6	4	199	4
14. Aldehydes	3	3	202	4
15. Dust counts	3	4	202	5
16. Mercury	5	6	198	4
17. Other samples not listed above (specify)	3	2	178	3

12. Do you provide preweighted cassettes and analyze for:

	Yes (1)	No (2)
Total dust	9	213
Percent free Silica	8	213

13. Do you take samples for evaluation of air pollutants? 1. Yes, 15. 2. No, 194.

14. Do you analyze environmental air samples for the following air pollutants?

	Routinely (1)	Occasionally (2)	Never (3)	Planned for future (4)
1. Carbon monoxide	9	7	204	4
2. Particulates	10	7	204	3
3. Hydrocarbons	7	6	206	5
4. NO_x	8	8	204	4
5. SO_x	6	9	205	4
6. Photochemical oxidants	5	7	206	5

	Yes (1)	No (2)
15. Do you perform workplace noise level monitoring?	10	227
16. Do you perform environmental noise evaluation?	9	228
17. Do you have equipment which can measure on-site noise level (dBA) over an 8-hr period?	10	227
18. Please indicate if you would like a copy of this compilation	137	--------

TOTAL PARTICIPATING LABORATORIES (273) BY COUNTY

Adams, 1.
Allen, 4.
Ashland, 1.
Ashtabula, 3.
Athens, 3.
Auglaize, 1.
Belmont, 3.
Brown, 3.
Butler, 5.
Carroll, 0.
Champaign, 1.
Clark, 1.
Clermont, 0.
Clinton, 0.
Columbiana, 5.
Coshocton, 3.
Crawford, 2.
Cuyahoga, 50.
Darke, 0.
Defiance, 2.
Delaware, 2.
Erie, 1.
Fairfield, 2.
Fayette, 1.
Franklin, 35.
Fulton, 1.
Gallia, 1.
Geauga, 0.
Greene, 2.
Guernsey, 0.
Hamilton, 20.
Hancock, 2.
Hardin, 1.
Harrison, 1.
Henry, 1.
Highland, 1.
Hocking, 2.
Holmes, 1.
Huron, 1.
Jackson, 0.
Jefferson, 3.
Knox, 2.
Lake, 5.
Lawrence, 1.
Licking, 3.
Logan, 1.
Lorain, 6.
Lucas, 16.
Madison, 2.
Mahoning, 6.
Marion, 3.
Medina, 3.
Meigs, 2.
Mercer, 2.
Miami, 1.
Monroe, 0.
Montgomery, 12.
Morgan, 0.
Morrow, 0.
Muskingum, 1.
Noble, 0.
Ottawa, 0.
Paulding, 0.
Perry, 0.
Pickaway, 0.
Pike, O.
Portage, 1.
Preble, 1.
Putnam, 0.
Richland, 4.
Ross, 1.
Sandusky, 0.
Scioto, 0.
Seneca, 0.
Shelby, 1.
Stark, 7.
Summit, 10.
Trumbull, 3.
Tuscarawas, 0.
Union, 1.
Van Wert, 1.
Vinton, 0.
Warren, 0.
Washington, 3.
Wayne, 2.
Williams, 1.
Wood, 5.
Wyandot, 0.

The Universities

In June, 1974, the Labor Education and Research Service of The Ohio State University contracted with the U.S. Department of Labor to "Demonstrate the feasibility of encouraging voluntary compliance by using a statewide university extension program to develop, conduct, and evaluate job safety and health training for about 4,000 employees and employee representatives." This contract further provided that state employees would be utilized by The Labor Education and Research Service as instructors in the program, which was originally designed to be offered only to persons in the State of Ohio.

Because of the success of this program and its potential application to small business, it is described here.

A series of unanticipated events centering around a change in state administration culminated in an alteration of the close working relationship between The Labor Education and Research Service and the Ohio Industrial Commission's Division of Safety and Hygiene and the Ohio Department of Industrial Relations.

The heart of the program is a "hazard recognition" course utilizing audio-visual, educational television and programmed learning material. Tests of the first materials included a small number of small businessmen. Flexible and able to be tailored to special needs—one hour to four weeks of instruction is possible—it provides an excellent pattern for the utilization of established extension services.

Still another effort was the now defunct Ad Hoc Occupational Safety and Health Task Force. This coordinating body, located at Case-Western Reserve School of Medicine and funded by the State Health Department, coordinated efforts by state agencies, the federal government, Cincinnati, Case-Western Reserve, and Ohio State Universities, management and labor. A key report, written by the staff of the LERS at Ohio State University follows.

The federal input was from NIOSH, since the members wanted to distinguish this effort from OSHA enforcement.

The Ad Hoc Occupational Safety and Health Task Force

REPORT ON AREA OF RESPONSIBILITY NO. 3

Area of Responsibility Task No. 3 was to survey:

(a) Educational Services for activities of county agents.

(b) Educational courses and programs including those of education and agriculture and state universities.

There are 114 colleges and universities in Ohio. Of these, 76 are four-year institutions, and 38 are two-year colleges. Of the four-year institutions, we surveyed the 10 with Schools of Engineering, the 15 members of the Ohio Council on Higher Continuing Education, the one Agriculture Extension Service, and the one Labor Education and Research Service. We surveyed all 38 of the two-year colleges.

Four-Year Colleges and Universities

Four-year colleges were surveyed by telephone. Responses are given in Appendix I.

Credit Programs—Engineering

Surveyed were the 10 institutions with Schools of Engineering. None questioned had a major in occupational safety and/or health, but 6 of the schools do offer courses on a regular basis: Akron, Ohio State, Dayton, Ohio University, and Miami University. The total number of students taking these courses last year was 300. In addition, Cincinnati offers courses sporadically, and intends to institute a regular program for engineering majors in the near future.

TABLE I.—*Courses in schools of engineering*

School	Professor offering course
University of Akron	Paul Dunham, Milton Wales.
Case Western Reserve	
University of Cincinnati	Max Brown, George Mueller.
Cleveland State University	
University of Dayton	Philip Patrick.
Miami University	Ronald Treiick.
Ohio Northern University	
The Ohio State University	Thomas Rockwell.
Ohio University	Albert Squibb.
University of Toledo	E. D. Florence.

Credit Programs—Other

Next fall, the Firelands Branch of Bowling Green State University is instituting a major in environmental technology. Faculty is still being sought.

Continuing Education

(Continuing Education data were obtained from The Ohio Council on Higher Continuing Education.) Four institutions, Akron, Dayton, Ohio State, and Toledo, offer occupational safety and health instruction on a regular basis in their continuing education program. Three others, Cleveland State, Cincinnati, and Bowling Green, have at one time or another co-sponsored programs with local safety councils.

TABLE II.—PROGRAMS IN CONTINUING EDUCATION

Program	Instructor	Participants
Akron	Bill Miller, Harry McInery	65
Dayton	Philip Patrick	([1])
Ohio State (LERS)	Staff	4,906
Toledo	E. D. Florence	100

[1] No data.

Continuing Education—Agriculture

In 1971, after the passage of the law, the OSU Agricultural Extension Service offered approximately 30 programs designed to acquaint agricultural employers with the provisions of the law and their responsibilities under it. They also presented some radio announcements, dealing mostly with recordkeeping requirements under the law.

Currently, the Extension Service is not involved in programming. Current information on changes, standards, etc. is provided to the County Extension Agents, as is information on record-keeping requirements and procedures.

Director of the College of Agriculture's health and safety activities is Professor Wilbur Stucky. He is responsible for keeping the county agents informed, and has more detailed information on the kinds of programs they have run.

TWO-YEAR COLLEGES

Thirty-eight two-year colleges were surveyed by mail. Responses were received from 28. A complete list of Ohio's two-year colleges is given in Appendix II. The responses to our survey and the list of respondents is given in Appendix III.

Credit Programs

Eleven two-year colleges offer credit instruction in various aspects of occupational safety and/or health. Enrollment last year was approximately 300. No schools offer a major.

TABLE III.—2-YR COLLEGES CREDIT PROGRAMS

School	Faculty	Participants (last year)
Muskingum Area Tech	R.L. Gilbert, Daniel Hehr	21
Cincinnati Tech	Wm. G. Rhein	4
Ohio College of Applied Science	George Mueller	30-40
Cuyahoga Community College—Western	Galo Blanko, John J. McBurney	([1])
Terra Tech	James R. DeVolder	67
Belmont Tech	John M. Boyer	([1])
Stark Tech	Wm. Hammen	15
Ohio University—Lancaster	ISE Athens staff	18
Lakeland Community College	Edwin Kumler	13
Miami-Middletown	David Treiick	35
Jefferson City Tech. Institute	Robert Smith, Joseph Osvart	41

[1] No response.

Continuing Education

In addition, 13 schools offer instruction in occupational safety and/or health n their continuing education programs. Enrollment last year was approximately 700.

TABLE IV.—2-YR COLLEGES CONTINUING EDUCATION PROGRAMS

School	Faculty	Participants (last year)
Terra Tech	James R. DeVolder	52
Belmont Tech	Columbus Safety Council	100
Columbus Tech	Russ Putney, Peter Schmidt	140
Ohio University—Chillicothe	Charles [illegible]verly	13
Ohio University—Lancaster	ISE Athens faculty	18
Miami University—Middletown	David Treiick	35
Jefferson City Tech Institute	Joseph Osvart	17
Muskingum Tech	R. L. Gilbert, Daniel Hehr, Russell L. Compton.	60
Cincinnati Tech	Faculty from apprentice committees	200
Ohio College of Applied Science	George Mueller	30-40
Cuyahoga Community College—Metro	Not listed	80
Cuyahoga Community College—Western	do	50
Youngstown State	do	150

9 colleges stated that they offered no courses and had no plans to do so.

CONCLUDING REMARKS

In general, our survey of occupational safety and health education revealed mixed progress and mixed prospects. There is a growing awareness of the occupational safety and health field among educators and students. A significant—though by no means satisfactory—number of courses and programs are being offered, over 75% of those taking courses were employees in programs co-sponsored with the Ohio labor movement and LERS, and some schools plan either new or expanded programs in the immediate future. Table V shows the summary results of our survey.

TABLE V.—OCCUPATIONAL SAFETY AND HEALTH EDUCATION IN OHIO

	Institutions	Students
Credit programs:		
4-yr colleges	7	300
2-yr colleges	11	300
Total	18	600
Continuing education programs:		
4-yr college	4	5,071
2-yr college	13	700
Total	17	5,771

Major problem areas are apparent, however. Although the continuing education effort is by far the largest component of occupational safety and health education in Ohio, total numbers are still minuscule compared with the total size of the Ohio work force. The reliance, in smaller programs, on community and business personnel as faculty raises doubts as to the quality of instruction. This points in the direction of an additional problem area: the absence of any program designed to train qualified instructors in the field, and the absence of any concerted effort to develop instructional materials.

Projections for the future do include some steps designed to improve both the quantity and the quality of occupational safety and health instruction. In the area of credit instruction, two schools not now offering courses plan to do so next year; and two schools—Columbus Tech and Bowling Green-Firelands—plan to have associate degree programs operative by 1975.

In the continuing education area, the Labor Education and Research Service at The Ohio State University hopes to initiate by summer a major program in public education through WOSU-TV, a major program in hazard recognition and the training of hazard recognition instructors. These programs will involve the cooperation of the major state agencies having occupational safety and health responsibilities. Another proposal designed with the cooperation of the Division of Safety and Hygiene has been submitted to the Ohio Board of Regents. This proposal covers safety and health education programs throughout the state for small business employers (less than 500 employees) in manufacturing and construction.

NSC and OSHA

Joseph Wolfe, Ohio Safety Council, was interviewed. They have a manufacturing membership of 450 with jurisdiction in Central Ohio's eight counties. In this area there are approximately 25,000 business establishments covered by OSHA, most of which are employers of less than 500. Under the Department of Labor grant there are to be 67 courses offered—840 students have been trained to date with a goal of 4,000.

The Ohio Safety Council has access to the National Safety Council library and facilities. Mr. Wolfe felt that there was adequate information available.

Peter Schmidt, former U.S. Department of Labor OSHA Area Director in Columbus, was interviewed. Area of authority: Southeast Ohio consisting of 37 counties. Stated an estimate of companies inspected each month at three per man week with a staff of 18. This would indicate 234 inspections per month and 2,808 per year. Little consultation or information of any sort is available from this office.

VI. CONCLUSIONS

Our study covered on-site and off-site services provided by trade associations, professional and lay organizations, the federal government, state government, and university extension services and educational programs. In-depth studies in Wisconsin and Colorado and a case study of resources in Ohio were made.

Trade associations are providing uneven coverage, but in great variety and often with detailed on-site assistance. Given the nature of these groups, we believe that they are responding to constituent demand for service.

No systematic examination of materials, for example, was made. But in the course of doing the study, the investigators were exposed to much material of a very high caliber.

No attempt was made to examine the quality of service. In terms of quantity, however, everyone of those surveyed were doing something; most were doing something substantial. If many were not providing direct or indirect on-site service, this is probably because of a lack of demand.

Professional and lay organizations are responding to the impact of OSHA in similar fashion: anticipating constituent or market demands. Active—and subsidized—promotion produces large numbers of attendees at OSHA-funded National Safety Council seminars. The initiative came not from the attendees but from OSHA and professionals in the Council.

Without promotion, the American Occupational Medical Association needs to provide very little. Consequently, they do very little. The hygienists and safety specialists, through their organizations, have organized referral services that literally "blanket" the nation. They actively promote these services, in part, because of the need to promote the commercial services of some members.

Each of these groups is free-standing and uncoordinated. Even the OSHA-funded programs are not related. Thus the seminars conducted by the American Industrial Hygiene Association are not related to the National Safety Council effort.

None of these programs as a group are at all related to federal and state government consultative services. The AIHA services utilize university resources. However, the utilization is not systematized on any kind of state or regional basis.

The OSHA-funded community college experimental program was not studied, but we are unaware of any conscious relationship established between this program and any other.

OSHA materials are available but in very limited quantity. OSHA off-site consultation is—apparently—not in great demand. Essentially, the skills that can be offered by OSHA are in the area of *what* is required and *not* how to meet these requirements.

The NIOSH activity has great promise. This organization can provide information—on-site—on how to meet these requirements. It can supply technical services on-site. The difficulty is that here again the effort is free-standing, bashfully offered, and painfully inadequate.

A long tradition (fifty years), a corporal's guard of technicians and a handful of pamphlets and film strips do not make a serious effort. It is essential to point out, however, that a cursory examination of their materials shows that they fit the needs of retailers and others usually neglected.

The state governments in Wisconsin and Colorado may be able to develop effective on-site services. At the time of the study they were just becoming disentangled from the traditional programs and were adjusting to new enforcement roles. However, one thing is clear: any employer wanting consultative assistance could have it. The existing resources—particularly the University of Wisconsin's engineering extension service—were under-utilized.

The historic experience of the states—demonstrating the inability of an agency to maintain both enforcement and consultative services—is an important lesson.

The pattern established in Ohio offered us a clear model for state-federal-private sector efforts. It was a clear break from the traditional, compromised state program in which enforcement and service are combined.

It is unfortunate that purely political circumstances have truncated most of that program. But the lesson was learned and it is worthwhile to resonstruct its elements here.

A "task force" (funded by the State Health Department) had been established to coordinate the effort. A strong state government agency (Ohio Industrial Commission)—freed of any enforcement responsibility—provided broad skills, facilities and funds for an aggressively promoted, wide array of field services for every possible kind of business closely coordinated with the federal government, the universities (particularly Ohio State University) and other community resources. The Department of Industrial Relations provided close support from the Governor's Office, other state agencies and good liaison with federal agencies, labor and management.

The demise of the program (the "task force" no longer exists) teaches us that political continuity is a critical factor in terms of the long-term viability of any pattern of consultative services that may be created.

Mr. CLAYMAN. I feel I am in a very strange role this morning, Mr. Chairman. I am in opposition to your point of view, and that is extraordinary for both of us. I have recognized that from the beginning and I still recognize in spite of your sponsorship of this bill, which I oppose, that you indeed were the original sponsor of the original bill in the House, and that we shall never forget, because we have attached that much significance and that much priority to occupational safety and health.

When you know that, as you do, Congressman, I suspect you may understand our sensitivity in this field. It is almost sacrosanct. "Please don't lay any hands upon it." That is pretty much our attitude. It has become almost an emotional reaction, and yet there is rationality behind it, though I deeply respect your point of view.

Now, we are not opposed to the bill because we are opposed to consultative services. As a matter of fact, and oddly enough, not the representatives of small business, the many institutions which represent them, not they, they didn't come forward and ask for more money for educational services to small business. The industrial union department did. As far back as 1972, over and over again since we have appeared before the Appropriations Committee and this committee, we were for education and consultative services. And in the main, we didn't entirely succeed.

Now, why are we distressed that now you are suggesting in your bill consultative services? We are distressed because we think you are putting it in the wrong place. The tool, a sound tool, is being put in the wrong hands. The cop, the police department is not really the place—normally—where you can anticipate sound education and sound consultative services. It is not part of the psychology of the policeman on the beat. It is not part of the psychology of those who enforce the law, and your bill puts it there, and it disturbs us.

Now, when we originally, together, over great opposition, built the bill that became the law of the land, we did think about consultative service, Mr. Congressman, and you were a good part of that, and we deliberately and with malice aforethought, as it were, we deliberately put it in NIOSH. We deliberately wanted to strengthen and emphasize and particularize the enforcement end in OSHA, and we set up NIOSH as the experimental basis, the research basis, the medical research basis, plus specific technical services.

As a matter of fact, in fiscal year 1976, NIOSH will spend roughly about $3,800,000 for one or another form of consultative services. We did that; we set that up in that fashion so—your argument has been and I think it makes sense—that the original act, and you as sponsor made sense, the original act carefully, in general terms, defined the jurisdiction of each one of these agencies. Now we are saying, no, let's change it around. Let's make the policeman an education. Our fear is that this won't work. In addition, and unfortunately, if I understand at all political psychology, what will happen ultimately, not immediately, what will happen ultimately is that OSHA, if we do what is being suggested in the bill, OSHA will become more consultative than it will become enforcement, because that is the easy way to go.

And we all, I think, understand that. If there is a choice, in political terms, if there is a choice, an official will go to consultation. Consultation is not the road. As was said by the previous testimony, we have had 75 years of consultation, almost exclusively so. That is what happened in the States: almost no enforcement, almost all consultation in practical terms.

Mr. Daniels. Jake, will you yield?

Let me clarify the contents of my proposed legislation. My bill specifically provides for a separation of compliance and consultative personnel. There is no mix between the two. Now, if you feel that my interpretation is wrong and that your interpretation is correct, I would welcome any amendment that you propose to submit to me to make sure there is no mix.

Mr. Clayman. Congressman, I am suggesting that as night follows the day, speaking strictly in political terms, give them a few years, experience will dictate that the principal emphasis and the principal money, which is important——

Mr. Daniels. Would you be surprised to learn that originally I drafted this bill with a very important, well-known member of the labor movement for whom all you gentlemen representing labor today have the highest respect?

Mr. Clayman. All I can tell you——

Mr. Daniels. There is a separation of enforcement from consultation in this bill pursuant to his suggestion and advice to me. Fearing there would be too much emphasis on consultation, he suggested it should be a separate appropriation for both.

Mr. Clayman. I want to say, and I don't want to pursue——

Mr. Daniels. I don't want to embarass anybody, but I want to bring this to your attention.

Mr. Clayman [continuing]. I don't want to pursue the matter for the reasons you stated.

Mr. Daniels. You gentleman, whom I respect and with whom I have gotten along so well in the past, I don't know why you can't sit down and work with us on a bill here. My office is open to you as it has been in the past.

Mr. CLAYMAN. There are three labor spokesmen who have and will appear here this morning and they all have the same point of view.

Mr. DANIELS. May I put one question to you now? Mr. Clayman, in 1975 the Appropriations Committee authorized an appropriation of $5 million for consultative services for the States and, as has been brought out here this morning, 15 States have taken advantage of that provision whereby the Federal Government will provide the funds on a 50-50 basis. Last month the Appropriations Committee appropriated $5 million for fiscal 1976. There are 19 States not in the program at the present time. But let's assume that the other 19 States decide to take advantage of this law in 1976, is there any guarantee the Appropriations Committee will make a further appropriation in 1977 in view of the remarks of Congressman Flood of the Appropriations Committee for 1977 and future years?

Supposing the Appropriations Committee does not come forward with any appropriation, what will happen to those 34 jurisdictions, they will be without consultative services, won't they?

Mr. CLAYMAN. Even if one accepts that analysis—and it could become a fact—it does not change the basic assumption that we make and it seems to me that you might very well make. We are not saying let's not have consultative service. We are saying where shall it be? It is now in NIOSH. It does not have to be in OSHA. What magic dictates, from your point of view, from the committee's point of view, what magic dictates, what wisdom from on high dictates that it be in OSHA, why not NIOSH? There you have the mood, there you have the kind of climate which leans in the direction of consultative service. They have highly technical people. They need more money, that is the problem. They need money and, if you gave the money, whatever you planned in your bill to give to OSHA, well give it to NIOSH and we will not complain.

Mr. DENT. May I ask a question at that point or make an observation?

I think in the face of what I have already heard that we have a great opportunity to get this thing settled in the House. The latest remarks of Mr. Clayman show they are not closing the door on Federal participation but they are closing the door on mingling—and it will mingle if it is put in under OSHA in any fashion. A commingling usually dilutes the efforts of the inspection service to the build up of the consultations because that is the way employers will apply it. What I think we ought to try to do is offer a suggestion and see whether or not these witnesses here today, who represent a great segment of the country, might not be satisfied with it.

I think you have to have the threat of Federal participation and consultation held over the heads of the States by going in and usurping the field if they don't present some kind of State program. The greatest fear any of them have is that OSHA is going to take over the consultation service because that will be a pipeline to the inspectors. They will say, hey, this option over here has 17 violations.

I think we can work it out so we have that threat over their shoulders that we will heavily finance the service and have consultative services that have no authority over OSHA's features.

Mr. **Gaydos.** I would like to make a point here, if the Chairman would permit.

Mr. Dent has suggested historically when you emphasize, one, that is consulting services, you take away from the inspection and enforcement aspect. Now, you mentioned that the crux of the problem is where are you going to put these consulting services. I think in addition of that, Mr. Clayman, if you will hear me out, I think the other point is important also as to where and how you are going to finance it because everybody seems to forget, and the Chairman has repeatedly referred to the appropriation language by Mr. Flood at the time the consulting services were provided for on the floor of the House in conjunction with the appropriation measure. Let me make it a matter of record, at the time there were two other actions on the floor, No. 1, a Steiger amendment and a Michel amendment. Steiger's amendment to the appropriation bill provided $5 million in addition—I emphasize in addition--to the money available for inspection services.

Then came along Mr. Michel and he said, wait a minute, my amendment is going to take $5 million out of existing funds for the inspections and provide it for the consulting services. So what do we have as a matter of fact? We had, as a matter of fact, in the history of the floor of the House a maneuver which resulted in stealing from the inspection and enforcement area $5 million. There is the problem we have.

Mr. **Daniels.** I recognize you for 5 minutes.

Mr. **Gaydos.** That is 2 of my minutes.

Mr. **Daniels.** I will give you 5 additional minutes.

Mr. **Gaydos.** I believe then that we do have some substance and we do have some recorded action and we do have proof that a good lawyer or good legislator would look at, a track record of what occurred. That is what occurred. I think it gives credence and substance to the fear you expressed here today that we have to be careful on this legislation because again we will just enlarge upon that chicanery which occurred, where we will reduce funds for inspection and enforcement, so I think the fears you express aren't empty fears as far as the appropriation aspect of the thing is concerned, that is where are you going to get the money. I don't think it is in the field of conjecture any more, I think you have something to look at and say; yes, this is going to happen because such and such happened. Let's get into the aspect, if I may, as to where these consulting services are properly to be placed. I think you are making the point that definitely they should not be in the area as suggested by the legislation. That is just my little speech.

Let me ask a question, if I may.

I am of the opinion—I want your candid response to my statement—I am of the opinion that my Chairman, who I dearly love and respect has over-reacted on the floor to Mr. Findley. He told Mr. Findley at the time when we had the confrontation and argument on the floor, he said, "Mr. Findley, I give you my word as Chairman of this subcommittee we will, as soon as possible, go into hearings and we will bring legislation on the point we are discussing." That is what the Chairman said.

Now, I think the problem is, Is the Chairman overreacting in this legislation? Is he fulfilling his obligation on the floor to Mr. Findley at this time? I think his position is over-compliance. It is very generous to Mr. Findley. The legislation suggested would be as much a responsibility for him to maintain his word of honor on the floor as his present legislation. I think his present legislation is too generous to Mr. Findley and I think the points you raise, the critical points are more than justified.

So that brings me to my question. My question is, Under what conditions could you support the Chairman, as you always have in the past, what amendment would you suggest and still have the Chairman's suggested legislation or collective legislation become a reality with, as always in the past, the full support of labor because it seems to me they have been wedded together for many, many years. You just stated that as a witness and I think it is imperative for you and the labor movement generally to become a part of this legislation.

Where do you think and what type of suggested amendment would you have? Where do you think it should fit in here? I think it can be done, so if you could address yourself to that, I would appreciate it.

Mr. CLAYMAN. I simply would rephrase what I think I have already said. Mainly, there is an existing agency that already has been empowered to perform consultative service. That is NIOSH. Already it is on the books.

Now, it is conceivable—I would want to go back and look more carefully, I don't want to be too cursory or casual in my response at this point—it is conceivable there may be need for some clarifying amendment. I say this without careful thought and we need to look at it. But having said that, if Congress does not put the money in—and so far it has not been as responsive as we believe it should have been—unless money is put in sufficient sum to make the agency work in this direction, it will be a relatively pious expression of good will.

And so, Mr. Gaydos, I don't want to—because I can't at this specific moment—spell out the details of the kind of legislation or amendment we would approve. But I have indicated in a general way, in my judgment, the kind of approach we would consider, at least the IUD would consider as worthy.

Mr. GAYDOS. If I may conclude with an observation, I believe by your response you indicate to me that you share my very uneasy feeling of the somewhat unorthodox position you are in, of not giving full support to the legislation and how you are thrust into the position of questioning the legislation where you should more rightly be in support of the legislation.

Mr. CLAYMAN. I am uncomfortable only to the extent I am not prepared to give you specific language and you seem to be asking for a specific amendment.

Mr. DANIELS. I have a copy here—you had specific reference to section 21. Would you care to read it?

Mr. CLAYMAN. Yes; certainly, sir.

Mr. DANIELS. Does this reinforce the statement you previously made that NIOSH have jurisdiction?

Mr. CLAYMAN. I think what the language says in that section—and section 20—among other things, is that NIOSH shall have the authority to inform or determine, that is, to consult with and advise employers and employees and organizations representing employers and employees as to the effective means of preventing occupational injuries and illnesses. There it is. And my interpretation of this language is there would be no need for amendments. There would be need to plow money in, more money into NIOSH because obviously NIOSH could not perform this service as extensively as apparently some of you feel it needs to be done without additional money.

Mr. DANIELS. I respect your opinion. I want to ask you this question. Doesn't NIOSH have any responsibility today in the highly technical field in areas relating to health hazards, health hazards in education, and haven't they done a great deal of technical and extensive scientific research in this department? If my recollection serves me correctly, they have submitted about 14 different reports dealing with chemicals, with regard particularly in the area of cancer research, vinylchloride, asbestos.

Mr. CLAYMAN. Congressman, I would answer you——

Mr. DANIELS. Do you think if we gave this on-site consultation for businessmen upon request that we would not dilute the effective work they are doing at the present time?

Mr. CLAYMAN. I would rephrase the same question to the committee in relation to OSHA. Haven't we given OSHA enough responsibility in the terms of enforcement, with 5 million establishments with a relative handful of people to enforce the law? Haven't we given them enough?

Mr. DANIELS. Then you don't feel it would dilute NIOSH?

Mr. CLAYMAN. I think the dangers, if there are any in NIOSH, are obviously less apparent if it went to NIOSH than if it went to OSHA.

Mr. DANIELS. Would you support the bill if we put it in NIOSH?

Mr. CLAYMAN. That is very difficult for me to answer.

Mr. DANIELS. But you are making a recommendation.

Mr. CLAYMAN. I don't know what you might have in mind. I am saying that we don't need—as I read this language——

Mr. DANIELS. Just make it clearer, spell it out in black and white and as different as day and night.

Mr. CLAYMAN. That it should be in NIOSH?

Mr. DANIELS. No; make the law a little clearer. We have done that, we have been repetitious in our language.

Mr. CLAYMAN. I would want to see what it is before I made a comment. If this is not clear enough, the spelling out of consultative service, then it can be made clearer, but I think it is clear.

Mr. DANIELS. To re-emphasize, on-site consultation, Mr. Clayman.

Mr. CLAYMAN. I am speaking now obviously off the top of my noggin, such as it is. I see no problem with NIOSH doing this job. The problem I see and the problem that all of you will have in getting the legislation spelled out more clearly, if that is necessary, will be the matter of providing money for it and Congress has not been diligent in this area. If you provide money for it and think it is necessary to spell it out in more detail—although I don't know how much more clearly it can be done in the English language than appears here now, I at least have no objection.

Mr. GAYDOS. I think you stole my time. I yielded to the Chairman.

Do you feel NIOSH is more in the highly technical area, the exploratory area? They are doing the scientific research, that is where NIOSH is. They are doing things that can't be done by other people. Everything connected with it, the highly complicated pyrotechnical industry, areas where we make anhydrous ammonia, that is where NIOSH should be doing research and putting together requirements. Isn't that where they are?

Mr. CLAYMAN. Let me refer quickly to a voluminous study that my two associates with me have prepared. This was done sometime ago. I am referring to page 14.

NIOSH has published the following safety and health guides available to all of industry and just so there will be no mistake, I am going to read this list.

Bulk petroleum plants, publications indicating safety guidelines, health guidelines, grocery stores, retail bakeries, autobody and repair shops, service stations, grain mills, sporting goods stores, lumber and building materials industry. In the printing materials, electroplating shops, plastofabricators, fluid milk processers—well, adnauseam.

There you have several dozen publications and they are now in the process of publishing and will soon distribute some more.

Appearing on page 15, I will read what those are: how to get along with solvents, inorganic metal cleaners can be dangerous, working safely with pesticides, battery workers, health guides for spray paints, walking, fibrous glass layouts, installation, textile dying, soldering, braising, and many more.

And here is an agency that has already spent or will spend in this fiscal year roughly $3,840,000 in this total area. So NIOSH now has more than the function of being the researcher for standards. That is terribly important to understand.

Mr. GAYDOS. What kind of response have we gotten to date from these different publications? Have there been demands or requests made? Are they circulated generally?

Mr. CLAYMAN. The sad part is, as this study will indicate—if you get the chance and have the patience to read it—this study will indicate to you that there are all kinds of available consultative services, both government and private, but little demand.

You talked about Liberty Mutual, the gentlemen from Liberty Mutual who indicated how little they were asked for their services.

In the earlier years of my trade union experience, I came in contact with insurance companies considerably in the areas of workmen's compensation and one of their sales talks was—and incidentally Liberty Mutual is probably the best of any lot, in my judgment, unless history has changed since I looked at it last—their sales talk was not only do we cover you with your workmen's compensation, we give you consultative services.

Here is an ad that appeared in the Wall Street Journal, April 18, 1974. They indicate that "OSHA reaches into the life of your business. How far into your business will this far-reaching law reach?"

They are referring to OSHA. "OSHA is probably the single most important piece of safety and health legislation ever passed by Congress."

Again, you can be proud of your role in that arrangement and in that development, Mr. Chairman.

And then they go on to ask questions, "You have to guard dangerous equipment and prevent falls. You may need to set up an in-plant health facility, you may have to lower vapor dust and noise levels. How do you set up an in-plant health facility, how do you measure vapor levels?"

They go on to say, "Look, if you buy insurance from us"—they cover I guess a healthy share of industry, small and large—"we will give you consultative services," and they give it freely.

Well, I gather, I was not here, I gather the gentlemen from Liberty Mutual said there is little request by those that really need it and those that really need it are the small businesses.

Mr. GAYDOS. On that point, you say it so much more adequately than I when you brought up Liberty Mutual. Let me conclude my 5 minutes by asking if you share one of my fears; that is, I feel sincerely if we do not proceed with this legislation that ultimately we are going to experience a situation where we would have doubled our money available for consultative services by the 50 percent State participation.

Now, I fear that, as usual on this legislation and in other areas that we experience problems within this Congress, there is never enough money to properly finance its enforcement. We are always short. So here we have a situation where we have 15 States that have applied for 50-percent participating funds and that would double our money in the area of consulting in response to those who say it is so important—which I disagree with but they say it. Here, if we proceed, we will do away with the 50-percent participation because it would be logical for States to throw it all on the Federal people—"We have internal problems, you take up the consulting services"—but we destroy the original demand we had that they be in separate jurisdictions, that you not intertwine, that you not put in one jurisdiction the enforcement and the consulting service. That is the danger I see and I wondered, in conclusion, as to whether you share those fears I have.

Mr. CLAYMAN. I think that is a very perceptive observation that you have made. For example, if I were a legislator and I were asked where this $10, $15, or $20 million—where would it do the best job in the area of occupational safety and health? I would say not in consultative services. I would say it would be a better job either in NIOSH in the business of trying to set up new standards, important standards, or in OSHA in terms of inspection.

But I understand the political problems and I understand what some of you are saying, that there are political pressures. The fact is—and I understand this and I suspect if I were in public life I would not ignore them either—but the issue is not really as intense as it appears on the surface, Mr. Chairman.

For example, NIOSH does this job of consultation that I have told you about. In the last 16 months I am told they had roughly 150 requests for consultation, 150. In Ohio, my home State, where they have set up a pretty good consultation apparatus—it may have changed in the past few months, I am not certain, I have not been back there—but they have set up a pretty good consultation service. In the course of a year they would have relatively few requests, which means that even when you have an apparatus in place with a staff set up in place, there are very few requests for attention and service.

Despite that reality, I have been somewhat compromising in my testimony because I am aware of some of your problems.

Mr. GAYDOS. Let me compliment you for your candid responses. I thank the Chairman for allowing me more than 5 minutes. He has always been imminently fair and I appreciate it.

Mr. DANIELS. Mr. Risenhoover.

Mr. RISENHOOVER. I want to urge you to get with the Chairman and work out something labor could support. I know in Oklahoma our State inspectors went to Dallas and went through the same school, the same training, I guess as the OSHA inspectors do and they are not waiting for people to call and ask them to consult. In my district, that inspector is going on the site whether he is requested to or not and he is going through those businesses and small industries and pointing out things that have to be corrected. He is telling them if they don't correct it, they will get an inspector on the site and be subject to fine, and the problems are being corrected.

If we don't do something this year—maybe you have what you feel is a pretty good political reading across this country. I know what the situation is in my district and my district is pretty typical of most districts. Organized labor is not strong enough to carry it by themselves, it takes other people involved also to elect a Congressman and in my district with the President gaining in popularity as he is—and don't ever kid yourself he isn't—that plus OSHA, if we don't do something about it without weakening the act, but provide for more voluntary compliance, this time in 1977 you are not going to be here trying to moderate or to negotiate and find something reasonable, you are going to be here trying to save these acts. They will be subject to repeal and there will be enough people in this Congress to repeal them if we don't do something about them. That is the situation we face.

Mr. DANIELS. On behalf of the committee, I wish to thank you gentlemen for your testimony here today.

Mr. CLAYMAN. Thank you.

Mr. DANIELS. Our next witness is Mr. John J. Sheehan, legislative director of the United Steelworkers of America.

[Prepared statement of John J. Sheehan follows:]

PREPARED STATEMENT OF JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA

I appreciate this opportunity to appear again before the Subcommittee regarding OSHA consultative services. Earlier this year, I addressed the same subject during the Subcommittee's oversight hearings. The Committee now has specific consultative services legislation before it, but the central point of our testimony is much the same: there are already workable, state-run consultation programs in place, and we would oppose any new federal program as being unnecessary, duplicative and harmful.

Mr. Chairman, our Union appears before this Subcommittee to express opposition to HR-8334 and HR-8618, bills which propose to mandate federal OSHA to provide on-site consultative services. The current law prohibits federal OSHA inspectors from entering upon a worksite without the responsibility to cite a violation if found. Off-site consultation is, of course, permitted and, indeed, the federal agency has engaged in extensive activities to provide such advice. It is, however, the act's major departure from previous state safety laws by establishing the operating or enforcement principle of first instance citation that has stimulated continuous efforts in the Congress to amend OSHA. It was the enactment of that principle and its defense to which the labor movement continues to be committed. I say "continuous" because since the first introduction of a federal on-site consultation bill, we have viewed its implementation as an erosion of the first instance citation responsibility. The mere fact that the act needs to be amended in order to allow this type of service is indicative of our contention that it countervenes the enforcement principle.

However, it is now possible for all states to engage in on-site consultation through one of two means. States which have regained OSHA enforcement authority by putting into operation an approved Section 18(b) plan, can include on-site consultation as part of their program and receive 50 per cent federal funding. For the other states without 18(b) plan, 50 per cent federal money is available through

Section 7(c)(1) for on-site consultation programs. The addition of a federal program would add a third layer under Section 21, the relationship of which to the existing programs is unclear.

We have always opposed any on-site consultation program which would be placed in the federal enforcement agency, as in HR-8334 and HR-8618, because of the conflicting and debilitating effects it would have on the enforcement role. But perhaps more importantly at this point, we oppose any new federal program, regardless of what agency it is placed in, because it would thwart the state-run approach to consultation which is finally developing.

STATE INVOLVEMENT

It has always been our position that enforcement is best left as a federal responsibility, while the states should be encouraged to remain active in the complementary areas which are not preempted by the federal enforcement—areas such as education, training and consultation. Now that the federal government is extending such encouragement through the appropriations route, and now that the states are responding, it would be highly inappropriate and unfair to the states to suddenly reverse the course by placing the emphasis on federal consultation.

Until the 7(c)(1) consultation procedure was put into action, those states which relinquished workplace inspection to the federal OSHA were denied the opportunity to obtain federal funds for any nonenforcement, OSHA-related activities. While we opposed defederalization of enforcement, we did not feel that the state's safety and health capacities should be defunctionalized. But the administration took none of the steps that could have been taken under the act to keep the state activities in the nonpreempted areas alive. By its action in amending the appropriations bill last year, the Congress only told the administration to apply its existing authority in Section 7(c)(1) to the preempted states. It is important to note that there is nothing in the act which prohibits the use of OSHA funds to finance consultative services by the states.

DEMAND FOR CONSULTATION

Federal legislation is not needed, then, in the sense that consultation is already available through the states. We question its need in another sense as well, however. We have never been convinced that the real demand for on-site consultation is as strong among the business community as is the political demand in the Congress.

Private section on-site consultation has long been available to businesses of all sizes from a variety of sources. Perhaps the primary source has been the carriers of worker compensation insurance, which have a natural interest in improving workplace safety and health and, thus, reducing claims. The experience these carriers have had with their consultation efforts provides valuable insight for determining the need for a governmental program.

On-site consultation has been promoted on the basis that many small businesses seek information that is not now available to them, and that if the information were furnished there would be greater efforts towards voluntary compliance. One of the largest insurers involved with on-site consultation, Liberty Mutual, however, has found that the service is not used by those who really need it, even when there is a concerted effort to promote it among small employers. Testifying before the Senate Labor Committee on July 22, 1974, Roger Wingate of Liberty Mutual stated:

"We have experimented offering our services to small businesses. Now, we do service all business. But we service business on what we think is a need basis. We don't say we are going to spend so much of the premium, it's where we think the need is. We have experimented writing letters signed by our managers of our offices, saying to the employer you must be conscious of the Occupational Safety and Health Act and its importance to your business, and that we will be glad to come to your premises with a professional to evaluate the conditions of your plant. These letters involved small employers. We had a very small response. We had a little better response by calling them on the phone. I suspect a lot of this is influenced by the many pressures that the small businessman is under today in terms of his whole business.

"But I think you will find that when an offer to consult is made the people that will ask for consulting service, if it is provided, are the people that need it least. The people that need it most won't come for help. We have to find a better way to do something for the people that need it most."

The scope of services available through the private insurance carriers is great. The American Mutual Insurance Alliance testified before this Subcommittee on July 25, 1974, that "well over 3,500 full-time technical personnel are estimated now to be employed by insurance companies to provide occupational safety and health services." We seriously doubt that adding relatively small number of Federal consultants to this effort—an effort for which there is a very small response among those who need it the most—will be of any real help to the small businessmen.

RELATIONSHIP TO ENFORCEMENT

I think it is evident that much of the momentum behind the effort to place consultative services in the Federal OSHA comes from those who are not seeking a legitimate educational goal, but rather are seeking an avenue through which to weaken OSHA's crucial procedure of enforcement through first instance citations. That is the root of our steadfast opposition to consultation by OSHA personnel. The mere fact that the act needs to be amended in order to allow this type of service is indicative of the fact that it countervenes the enforcement principle.

It was interesting to observe the discussion between the Subcommittee members and the representative of the National Chamber of Commerce during last week's hearing, because it illustrated precisely the problems we have always foreseen in an OSHA on-site consultation program. The Chamber put forth some very logical questions concerning where the line is drawn between consultation and mandatory compliance. If one accepts the notion that consultation should be provided by the enforcement agency, very compelling arguments can be made that the consultant should be on equal standing with the compliance officer. Once that link is made, the compelling logic is to expand the consultation role, which can be done only with a simultaneous contraction of the enforcement role. The pressures for this expansion will not be contained by a provision such as Section (d)(5) of H.R. 8618, which provides for a separation of functions between consultants and compliance officers. The problem is not only one of a co-mingling of personnel but also a restriction in the size and future expansion of the consultation function—a restriction which is difficult to maintain once the dual consultation/enforcement role is accepted. In short, the establishment of on-site consultation responsibilities within the federal OSHA constitutes an erosion of enforcement authorities which undercuts the concept of first instance citations.

Placement of consultation in the nonenforcement states provides the necessary autonomy from federal enforcement so that conflict between the two roles is avoided. That brings me again to the point that legislation is not needed since the programs already exist for state consultation services.

RELATIONSHIP TO STATE CONSULTATION

I draw your attention once more to the testimony presented last year before this Subcommittee by the American Mutual Insurance Alliance. The Alliance did endorse a federal on-site consultation program. They did so, however, with an important caveat. Their testimony pointed out that most of the Section 18(b) states already provide consultation, and the statement went on to say:

"Additionally, Congressman Steiger's recent amendment to the Labor-HEW appropriations bill provides a procedure and funding for consultation in states without approved plans. Thus, if both programs [Section 18(b) consultation and Section 7(c)(1) consultation] materialized and become fully implemented, it would seem that the need for amending the Act to provide federal on-site consultation would be substantially diminished."

The Section 18(b) consultation is nearly fully implemented. Out of 22 states with approved 18(b) plans, 20 have consultation programs and we understand that the 21st is soon to be put into place. These states are now employing 145 consultants, with 50 per cent federal financing through Section 23(g). The Section 7(c)(1) consultation program for the nonenforcement states is not as close to full implementation, but considering the short time-frame under which it has operated, it has been very well received among the states. The appropriations bill was not enacted until December, and the administrative regulations were not promulgated until late May. Before the expiration of the fiscal year on June 30, however, 15 states made applications for the program and they will employ 208 consultants. There is nothing to prevent additional states from applying for the 7(c)(1) programs this year or in the future.

Since the proposed bills before the Subcommittee are silent on the existing 18(b) and 7(c)(1) programs, their relationship to these programs is not fully clear.

If a new program is legislated, there is the question of separate budget requests for each of the three programs—at best a dubious procedure. Will the Section 7(c)(1) programs eventually terminate? These are the programs run by the states. But then there is the more serious question as to whether the provisions of the new legislation (HR-8618), requiring OSHA consultants to notify OSHA inspectors under certain circumstances, should prevail in the Section 18(b) states. Do employers in these states have the right to call in federal consultants? If they do and the consultants find imminent danger or death and serious harm situations, do they request the assistance of federal OSHA inspectors, as required by the act, or state OSHA inspectors?

While this may not be a serious problem at this time since there are only two states involved, what would be the circumstances if more states dropped their consultative work since the federal government will provide the service at 100 per cent financing? The legislation does not address itself to the question of federal reentry into areas from which federal OSHA has been preempted.

The regulations governing the consultative programs in the Section 18(b) states are vague in that they need comply only with the "at least as effective" criteria controlling all state plans. However, the regulations governing the Section 7(c)(1) and Section 21 programs are much more detailed. Will employers complain about the differences in the programs offered?

During the course of these hearings it has been indicated that the intent of a new federal on-site consultation program would be to provide coverage for those states which have neither an 18(b) nor 7(c)(1) program. However, there is a much easier way of filling this gap in consultation coverage. Rather than creating a federal OSHA consultative program—which raises the conflict of interest problems within the enforcement agency and stymies any further development of the new and important state role as a complement to federal enforcement—instead, the federal funding under the 7(c)(1) arrangement could be increased from the current 50 per cent level. Under previous use of Section 7(c)(1) for different purposes, OSHA has used a 90-10 matching formula. This would provide a more meaningful incentive for state involvement.

The 50-50 formula for Section 7(c)(1) was adopted during the period of active encouragement of state take-over of OSHA enforcement activity wherein the government could finance those plans according to Section 23(g) on a 50-50 basis. But since the state plan drive has stabilized itself, there is no need for OSHA officials to fear that state plans would be rejected because a 90-10 or some other match may be available to the preempted states under Section 7(c)(1). Actually, these states should not be penalized by having to decide either to have a complete state enforcement and consultative program on a 50-50 basis or a complete federal enforcement and consultative program with no state funds. There is a middle ground for state involvement through the programs now available for consultative services under Section 7(c)(1) on a better matching basis.

This can be done even without legislation. There is no statutory requirement that federal funding under 7(c)(1) be limited to 50 per cent; that percentage was set administratively and can be changed administratively. The main congressional effort could then be concentrated on securing adequate appropriation of funds into the 7(c)(1) program. It might be most effective if the committee could originate a sense of Congress resolution directing OSHA to provide a different matching arrangement. With regard to the appropriation process, there are two aspects of this bill upon which I should like to elaborate:

1. Reference has been made that since the Appropriations Committee provided the funds that this was not a proper legislative route to finance consultative services. The Chairman of that Committee, Congressman Flood, has continuously resisted efforts to amend OSHA by exempting small business firms from inspection. He quite properly declared that the exemption was the jurisdiction of the legislative committee. However, the funding of a consultative service, through Section 7(c)(1), like any other funding request by OSHA, need not receive specific line-by-line statutory recognition, provided it is within the general purview of the act. Therefore, there can be no contention that the Appropriations Committee was acting under duress. Actually, there was no floor opposition to the $5 million appropriation this year. Critical floor comments last year on the Steiger bill were limited to questioning whether the states nonpreempted roles should be more expensive than just a consultative one. However, HR-8618 does not grant any role to the states even in this limited area.

2. There also has been some mention that a federal consultation bill is needed to assure that appropriations for consultation will be maintained. We would point out, though, that the enactment of new authorizing legislation provides

no guarantee that the authorization will be appropriated. The absence of appropriations has spelled the fate of other programs, and there is no reason to believe that an OSHA consultation bill would be insulated. Whatever reasons would prevail to influence the appropriations committee one way or another regarding funds for Section 7(c)(1) on-site consultation (i.e., without enactment of new legislation) would still prevail relative to funds for Section 21 (i.e., with the enactment of new legislation). Both programs will develop their own constituencies which will press both the administration and the Congress for full funding. Conversely, any force which would act to reduce the funding for a 7(c)(1) consultation program will have the same effect upon a legislated federal consultation program.

As a matter of fact, the supporters of the legislation should realize that enactment may not bring about all the consultation they envision. On-site consultation is just one very limited type of assistance out of a whole range of programs that are necessary, and an OSHA spokesman stated before this committee that the agency has doubts about the cost-effectiveness of on-site consultation. The agency views Section (d)(6) of HR-8618 as an opportunity for obtaining additional funds authorized by this bill to use for general educational and training programs. The OSHA testimony emphasized this point by stating at the outset:

"On-site consultation should not be viewed . . . as the most effective means for assisting employers seeking to comply. In many instances, the Federal assistance desired can be offered more effectively through group seminars and education, through cooperative programs with industry and trade associations, labor organizations, and professional groups, or by informational materials addressed to the specific needs of individual groups of employers."

and at the conclusion of their statement, the Agency again pointed out that "the consultation program should be only one element of a broad program of educational assistance to employers and employees . . . Should the bill be enacted, we would emphasize a balanced program of consultation and education."

In other words, there can be, and should be, no guarantee that all the funds authorized under HR-8618 would be used for on-site consultation. Furthermore, the other educational programs for which the funds could be used under Section (d)(6) of HR-8618 are already authorized under Section 21 as it now exists.

LEGISLATIVE DIVERSION

Aside from expressing our opposition to the substantive (and, I must say, narrow) issue of federal on-site consultation, the controversy on this matter has diverted Congressional attention and effort from the real evaluation of the need to strengthen OSHA. There has been extensive oversight hearings on and a comprehensive GAO critique of the OSHA operations. Yet, I am not aware of any legislation being sponsored which would increase the Congressional concern over safety in the workplace. I will mention only a few of those concerns so as to explain our frustration over a need to defend rather than to enhance OSHA.

1. While much discussion has been put into an on-the-site consultation service to plant managers, there is a glaring gap in the consultation program currently in place. After a citation is issued, OSHA inspectors are able to consult with industry in order to determine the comprehensiveness of the abatement order to correct the violation. The worker representative cannot be a party to those discussions. He can contest only the *duration* of the corrective order not the *content* of the order even though industry, after consultation, may contest both the content and the duration. We are concerned that this shut-off of participation may impair the effectiveness of the abatement order since the OSHA inspectors may be influenced by the private consultative session with the company.

2. There is a great deal of public awareness and concern over occupational disease. Yet, despite the fact that NIOSH—the HEW counterpart to DOL's OSHA—can transmit to OSHA recommendations of health standards (the so-called criteria documents) there is no obligation upon OSHA to react to them. As a matter of fact, NIOSH referred more than 20 documents between 1972 and 1974, and OSHA failed to react to any of them during that time. Certainly there should be a mandatory obligation to react to such criteria within a specific time frame.

3. The OSHA occupational health standards now being promulgated require medical examinations and removal from exposure of workers who have become diseased—and indeed removal is necessary to preserve his life. Yet, the standards since they do not require job transfer and rate retention, inhibit the worker from taking the medical examination because of either loss of rate or job. The OSHA standard-makers claim they do not have a legal right to require rate retention if

a transfer to another job is necessary. I would hope that the Committee could give serious attention to this shortcoming of the act, if, indeed, it is a statutory shortcoming. It may actually be an administrative shortcoming.

There are other concerns which are failing to get proper attention until the consultative issue is put behind us. Perhaps it is well that the bill has been introduced so that the legislative committee can put it in proper perspective and hopefully dispose of the issue.

STATEMENT OF JOHN J. SHEEHAN, LEGISLATIVE DIRECTOR, UNITED STEELWORKERS OF AMERICA

Mr. DANIELS. You may proceed, Mr. Sheehan. I note you have a lengthy statement and the Chair would like to ask if you desire to read the statement in full or do you care to submit it for the record and summarize your views.

Mr. SHEEHAN. Thank you, Mr. Chairman.

Mr. DANIELS. You have the privilege of proceeding in any manner you desire.

Mr. SHEEHAN. I realize I am on the short end of the time and maybe on the short end of the stick, but I would like to proceed anyhow with at this time reading the statement. The last two times I appeared before the committee in a similar position I summarized my remarks. I feel that at least the text flows in some kind of a consistency and I would like to try and proceed in that way.

Mr. DANIELS. The only reason I made the suggestion is that the committee may not sit during general debate in the afternoon without the express permission of the House. If any one member should object, that terminates the hearing and I desire to give the members of the committee an opportunity of questioning you. I read your statement earlier this morning and I know what you have said there and I think my colleagues could do likewise.

Mr. SHEEHAN. Let me attempt to do that. I hope nobody objects over in the House, but let me start off with this comment: That we appear before you again today as we have done on former occasions, and we have objected in the past to the consultative service legislation.

I might indicate here that we are also appearing before your committee to express our opposition to 8618, a bill which proposes to mandate Federal OSHA to provide on-site consultative services.

Now, the current law prohibits Federal OSHA inspectors from entering upon a work site without the responsibility to cite if they find a violation. Off-site consultation—and I would like to emphasize that, because if there is a genuine demand for some kind of information relative to whether there are standards applying in a particular work place—is of course permitted under the act and, indeed, the Federal agency and many other private organizations have engaged in extensive activity to provide such advice.

As you know, Mr. Chairman, I sit on the National Advisory Committee to the Secretary of Labor on this and we have had a number of people come before us telling us what they have been doing in terms of advising small business people with Federal funds, mind you, a $3-million contract provided to the National Safety Council to do precisely this, so there are extensive activities to advise the small business people. It is, however, the act's major departure from previous State safety laws by establishing the operating or the enforcement principle of first instance citation that has stimulated continuous efforts in the Congress to amend OSHA.

It was the enactment of that principle and its defense to which the labor movement continues to be committed. I say continues because since the first introduction of a Federal on-site consultation bill, we have viewed its implementation as an erosion of the first instance citation responsibility. The mere fact that the act needs to be amended today, as the bill would require in order to allow this type of service, is indicative of our contention that it countervenes the enforcement principle.

It is now possible for all States to engage in on-site consultation through two means: States which have regained OSHA enforcement authority by putting into operation an approved section 18(b) plan can include on-site consultation as part of their program and receive 50 percent Federal funding; for States without 18(b) plans, 50 percent Federal money is available through section 7(c)(1) for on-site consultation programs. The addition of a Federal program would add a third layer under section 21, the relationship of which to the existing programs is unclear.

While you were all discussing earlier today the relationship of this program under H.R. 8618, I took a look at the list of the sponsors of that legislation, Mr. Chairman, and I find that out of 23 cosponsors of your legislation, either those States already have existing consultative services programs in their particular States under their existing 18(b) plans or have applied for section 7(c)(1) money to put that service into the States.

I ask you, how is it, then, that these States that have consultative services are not so far able to assuage the opposition to OSHA since the program is already in effect in these States?

The list of Congressmen that are cosponsors already are benefiting, if you wish, from consultative surveys that are provided under the current law.

Mr. DANIELS. Will the gentleman yield for a question?

Mr. SHEEHAN. Certainly.

Mr. DANIELS. I am the prime sponsor of this.

Mr. SHEEHAN. It is not on here. I have Missouri, Montana——

Mr. DANIELS. I am from the State of New Jersey.

Mr. SHEEHAN. You are one of the six. New Jersey has to make the decision whether they want on-site consultation.

Perhaps I should break from my text to indicate that there is some inference that the passage of 8618 will insure that there will be consultative services and the Chairman has made, I think, very valid reference to the fact there are two States which have 18(b) plans that don't have consultative services and there are now approximately 18 States——

Mr. DANIELS. Out of 56.

Mr. SHEEHAN [continuing]. Out of 56 that have not applied for 7(c)(1) money to set up a consultative service in their State. The inference is that H.R. 8618 will mandate consultative services either in the two States that have jurisdiction under this act or in the 18 States that have not applied for section 7(c)(1) money and yet, Mr. Chairman, the Labor Department came before this committee and testified last week that where there is no demand for consultative services in the preempted States, the Labor Department does not intend to use the money authorized under this bill to set up useless and undemanded and unrequested consultative services.

As a matter of fact, they have made very clear in the testimony before this committee that they like the additional money that will be authorized under this bill because section 6D(f) of this act allows them to use the money for other than consultative services and, I think, they made very clear they would use the money for other than on-site consultative services if there is no demand for the services.

The point I am trying to make here, Mr. Chairman, is whether there shall be on-site consultative services. The root of it is, is there a demand for it? We respectfully submit to you, Mr. Chairman, that our reading is that the demand for it is mostly political and not substantive and that the business community that has politically demanded this legislative change has done so for the primary purpose of making erosions into the first instance sanctions.

The Chamber of Commerce commissioner testified before you a couple of weeks ago. His support of this bill, at most, was lukewarm. He said it was a beginning. What they want is to insulate employers against that first instance sanctions. The labor movement has continuously appeared before this committee and indicated that even if this foot gets into the door—and I think the Chamber of Commerce's position was very logical, their position was once you establish an on-site consultative services, you ought to provide some reasonable protection to the businessman that requests that services, that he will either not be inspected or that he be given a period of freedom from inspection.

Your bill, certainly, says there is no such insulation.

Mr. DANIELS. And I would be absolutely opposed to it.

Mr. SHEEHAN. We would have to count on your opposition for us to survive and there is no doubt about that. There is no doubt about the fact that the role of the chair in this controversial legislation is very important to us in the labor movement. There is no doubt about that at all.

What we are saying is that you are setting up a situation that logically would be hard to withdraw from and the Chamber has forcefully said that we should not have both consultation and enforcement, give the small employer the opportunity to be informed and give us protection from the citation.

As a matter of fact, on the floor when this debate went on last week with the appropriation bill, Mr. Findley, who also has a consultation service bill, made constant and repeated references to the first instance citations, and Congressman Flood, who has consistently opposed any legislation of OSHA on the floor—as a matter of fact, you made reference to his remarks earlier—opposed a Findley amendment thta would delete small business people from coverage under the act, and yet, Congressman Findley has constantly been making references that we have to change the first instance citations. That is really the objective of this political drive in Congress.

Mr. DANIELS. I have since spoken to Congressman Findley. I think I have talked him out of his idea in that respect.

Mr. SHEEHAN. You have spoken to him?

Mr. DANIELS. I have told him how wrong he was. He is coming around to our way of thinking.

Mr. SHEEHAN. I am very pleased that he is. I thought Congressman Steiger made an exceptional defense of the first instance sanction. But we all recognize you gentlemen are not only responsive to one another, but you are also responsive to a constituency out there, and this legislation will exercise that constituency more than it is now being exercised, that once having gained this, they should go the next step down the way.

Congressman Gaydos made reference to the fact that the Liberty Mutual Insurance Co. has testified there is no demand for this service out in the field. I happen to sit on that same committee that Roger Wingate serves on; namely, the National Advisory Committee to the Secretary of Labor. I thought his testimony before the committee was devastating. They went out of their way to telephone people that they want to come in and help them out, and they still got turned out.

As a matter of fact, there was other testimony by a representative of the American Mutual Insurance Alliance. I would like to read that, if I may.

The Steiger bill that is made reference to here is the one that the Appropriations Committee funds for the first time consultative services and without amending OSHA. The representative of the American Mutual Insurance Alliance said this:

> Additionally, Congressman Steiger's recent amendment to the Labor-HEW appropriations bill provides a procedure and funding for consultation in States without approved plans. Thus, if both programs (sec. 18(b) consultation and sec. 7(c)(1) consultation) materialize and become fully implemented, it would seem that the need for amending the act to provide Federal on-site consultation would be substantially diminished.

There you have it. The business community, at least one of the representatives of the business community, is saying there is no need for Federal legislation in this area.

This is what we are trying to say here today. Of course, I have jumped all over this text in terms of comments.

I want to make two comments about the arguments regarding the appropriation.

Mr. RISENHOOVER. Would you yield and let me ask a question?

Do you trust the business community to look out for the best interest of labor? You are referring to the business testimony there about there being no need for this. Do you trust the business ——

Mr. SHEEHAN. I trust the business community to look out for the best interest of themselves. And if there is a demand for consultative service to look out for themselves, here is a businessman saying he does not need it.

Mr. RISENHOOVER. He is interested in seeing this legislation repealed.

Mr. SHEEHAN. I would not say, for instance, that Roger Wingate or the representative of the insurance industry would come before this committee and advocate repeal of OSHA. As a matter of fact, I would think——

Mr. RISENHOOVER. I would not take his word for the fact there is no demand for the services.

Mr. SHEEHAN. As I said, this is his comment. As a matter of fact, I don't know, outside the two trade associations, any business people that have appeared before this committee.

Two comments I would like to make about the appropriations procedure, if I may. Reference has been made that since the Appropriations Committee provided the funds, this was not a proper legislative route to finance consultative services. The chairman of that committee, Congressman Flood, as I indicated previously, has continuously resisted efforts to amend OSHA by exempting small business firms from inspection. He quite properly declared many times that exemption was the jurisdiction of the legislative committee.

However, the funding of a consultative service, through section 7(c)(1), or if you wish through section (g), where you have the State plans, like any other funding request of OSHA need not receive specific line-by-line statutory recognition provided it is within the general purview of the act.

Therefore, there can be no contention that the Appropriations Committee was acting under duress. Actually, there was no floor opposition this time in any form whatsoever to the $5 million appropriated this year. Critical floor comments last year on the Steiger bill were limited to questioning whether the States' nonpreempted roles should be more expansive than just merely being one limited to consultative services. And there is some serious contention, Mr. Chairman, whether consultative services is being overemphasized to the detriment of other kinds of education and training.

As a matter of fact, the spokesmen for the Labor Department's OSHA has said there might be an overdramatization on this issue. Those were the comments that took place last year.

However, 8618 does not grant any role to the State—even in this limited area, and I think that is a point we want to emphasize, that H.R. 8618, one, does not help the States out in this area, and two, indirectly it may begin the demise of the section 7(c)(1) programs that are already in place in at least 15 of the States, and these 15 States responded within 1 month after the promulgation of the regulations by the Labor Department.

The other comment I wanted to make about the appropriation process was this, that the enactment of the new authorizing legislation provides no guarantee that the authorization will be appropriated. The absence of appropriations has spelled the fate of other programs, and there is no reason to believe that an OSHA consultation bill would be insulated. Whatever reasons would prevail to influence the Appropriations Committees one way or another regarding funds for section 7(c)(1) on-site consultation (that is, without enactment of new legislation) would still prevail relative to funds for section 21 (that is, with the enactment of new legislation).

Both programs will develop their own constituencies which will press both the administration and the Congress for full funding. Conversely, any force which would act to reduce the funding for a 7(c)(1) consultation program will have the same effect upon a legislated Federal consultation program.

As a matter of fact, the supporters of the legislation should realize that enactment may not bring about all the consultation they envision. On-site consultation is just one very limited type of assistance out of a whole range of programs that are necessary, and an OSHA spokesman stated before this committee that the agency has doubts about the cost-effectiveness of on-site consultation. The agency views section (d)(6) of H.R. 8618 as an opportunity for obtaining additional funds authorized by this bill to use for general educational and training programs.

Yet the current OSHA legislation provides that opportunity without the need for any amendment.

So, Mr. Chairman, perhaps I ought to end here at the end of a very long morning, by indicating that either, No. 1, there is a concern that States are not coming forth requesting the consultative programs or that, No. 2, OSHA in offering these under 7(c)(1) authority is doing so at a low level of matching on the 50–50 basis. Then I might suggest, Mr. Chairman, that perhaps a joint resolution of this Congress could mandate or suggest to OSHA that they change the matching basis for the 50–50 funds, so you would at least get a congressional vote that would show congressional intent is here so that the funds on a better matching basis would be available under 7(c)(1) and the program remains in the hands of the States.

Thank you.

Mr. DANIELS. I recognize the gentleman from Oklahoma, Mr. Risenhoover.

Mr. RISENHOOVER. On that final point, you must be aware of what joint resolution recommendations to Federal agencies, what effect it has had, and how they conduct their business.

Mr. SHEEHAN. Mr. Risenhoover, I would not disallow the impact of a resolution of that type because, let me indicate, under the OSHA Act, section 7(c)(1), funds were already available on a 90–10 basis. OSHA changed that formula primarily during the days, a couple of years ago, when there was an intense drive to defederalize OSHA. And when the States come in and take over jurisdiction they can only get funds under what is known as section 23(g) of the act on a 50–50 basis. Then the OSHA administrators were concerned that if they gave 90–10 money directly to the States without State plans, there would be an incentive for them to stay outside and let the Federal Government run it.

Now, that drive is over with. The State plan situation has now stabilized itself and there is absolutely no reason for 7(c)(1) money to remain at the 50–50 level. Here what we would be talking about is a congressional intent that it would not be.

Mr. RISENHOOVER. Then I would urge you to do the same thing that I urged Mr. Clayman, to get with the chairman of the subcommittee and propose something that is acceptable because it is very obvious we have only 18 States using the 7(c)(1) money. There must be a reason why.

Mr. SHEEHAN. Because it was a short period for them to apply. I don't think we should overspeak ourselves on that matter. The regulations were printed on May 20 and the 1975 appropriation was June 30. So those States didn't get in. Now, we have 1976 appropriations, they are up now. We don't know whether those States will come in or not. I think we ought to give them a chance. Your State is in.

Mr. RISENHOOVER. My State happens to be in a heck of a lot better financial position because of the tax on oil than the Chairman's State.

Mr. SHEEHAN. It will be the same on all States. We have been getting underfunding of OSHA ever since we have been here, underfunding of OSHA in all areas, let alone consultative service.

Mr. RISENHOOVER. It is my understanding there is money available for some 300 more inspectors than have been hired.

Mr. SHEEHAN. The problem is that when they get the money and by the time they get around to hiring—by the time the Congress acts in the appropriations system and the money is in the hands of the administrators, we have a very short period of time for them to go out and hire.

Incidentally, we are not at all reluctant to criticize OSHA either, because they have not gone the full length. The important thing I think here is providing enough funds to fund these operations. That is the problem.

Mr. RISENHOOVER. Let me ask you one question so we can clear it up for the record.

There may be some misinterpretation of your testimony, there has been at times on my part.

As a matter of priorities, do you—let me state it this way—do you want health and safety for your workers?

Mr. SHEEHAN. Yes.

Mr. RISENHOOVER. Or do you want to punish business and industry?

Mr. SHEEHAN. No; we do not.

Mr. RISENHOOVER. This is what I am looking toward, too, I am not interested in punishing a small businessman by having a fine slapped on him, but we have had a business shutdown in my area because of fines.

Mr. SHEEHAN. You are bringing up something else as to whether the choice is of jobs or death. I don't think you will get any labor official to stand before this committee and say we would rather have the job and let the guy get his hand chopped off.

I don't know any place OSHA has shut a business down, you can ask the OSHA official. There is not any plant OSHA has shut down.

Mr. RISENHOOVER. They didn't shut it down but people were off 4 or 5 hours, or a couple of days while the company took action on the problem. If we had had consultative services, which we are going to continue to have, they go in and tell the small businessman what has to be done and he gets it done and he is not exempt from inspection which would cite him in the first place. I would not go for that either. I think we have to keep the law the way it is. I am more interested in those people having a safe place to work and in their being able to continue to work.

Mr. SHEEHAN. I hate to talk generalities but it is the experience you are relating to, the fact your State has this program——

Mr. RISENHOOVER. I would like to see these other States do the same. I think we should force them to.

Mr. SHEEHAN. That is the point I wanted to mention before, 8618 does not force any State to have the program.

Mr. RISENHOOVER. Maybe we should amend it.

Mr. SHEEHAN. Where there is no demand, the Federal OSHA administrators will not use the money appropriated for on-site consultations.

Mr. DANIELS. It is true we don't force a State. This is a Federal program.

Mr. SHEEHAN. I went the second step by saying the Federal OSHA administrators have testified before you that if they don't get demand for service, they want——

Mr. DANIELS. Consultation and advice must be requested under my bill.

Mr. SHEEHAN. There are two parts. In order for a consultant to walk into a work place, you have to get the request from the businessman. This is to make sure the businessman does not unilaterally get the benefits of Government when he does not want them. More than that, if there are not many requests made in a region, OSHA administrators will not have a guy sitting by idly waiting for those requests to come in. They will transfer him to other activities and when they come before Mr. Flood's committee, they will not be asking for appropriation of funds.

We had a bad experience under the Metal and Nonmetallic Mine Safety Act with the guy sitting over there listening to Beethoven. They will use the money for other purposes if there is not a request for consultation services.

Mr. DANIELS. Such as training, education, putting booklets out into the field?

Mr. SHEEHAN. It is already provided for under section 21(f) of the act. It is already provided and the funds are there if requested. To put it the other way around, the request is valid to make before the Appropriations Committee.

Mr. RISENHOOVER. If you have suggestions as to how this bill can be made more binding and more effective, let's have them.

Mr. SHEEHAN. I frankly think we would want to stay away from any legislative action on the floor. There is a lot of danger and it is not responding to the people pushing for this.

Mr. RISENHOOVER. I will say the same thing to you I said to Mr. Clayman, if we don't take some action, in 1977 you are going to be up here trying to keep the act from being repealed.

Mr. SHEEHAN. That is one thing we should not overlook.

Mr. RISENHOOVER. The Chairman may not be the Chairman either because the majority party will name the Chairman.

Mr. SHEEHAN. This Chairman has done a great deal to weed out the fact from the fiction, and to a large extent the opposition to OSHA has waned for the first time. The House of Representatives has protected OSHA on the floor. That has never happened since the act passed. This is the first time it has happened. I think employers, the workers and the administrators now are beginning to work with the act.

The experience out there is that employers are not getting up tight about this act any more. They realize these people don't come in with moans, and that the standards that have been promulgated up to a couple of months ago have been basically standards recommended by employer groups in the first place.

Mr. RISENHOOVER. Mr. Sheehan, the only reason that in my district we are not having the trouble we were having is because on-site consultative services are being provided whether they ask for them or not. And don't think the business people in my area are not for this legislation. They would jump for anybody that came up here and suggested repealing it.

Mr. SHEEHAN. Why don't we leave the system in place. That is all we are asking.

Mr. RISENHOOVER. How about the other States who are not providing any on-site consultative services? Like I said before, I don't want to be up here with 300 Republicans. You may have a friend from me, you may have a few, but we won't be able to do what we want for the working people in this country. I don't see Chairman Daniels' proposal as weakening this legislation.

Mr. SHEEHAN. The need for legislation in your mind comes from the fact you have a program. It is operating under a system we have been supporting; namely, 7(c)(1). You look out and see some other States that don't have it and you have expressed legitimate concern for this. So have we. However, I think you ought to look at the reason why those States don't have the program. It's not based upon the fact that maybe they don't want it but rather they had too short a time to respond to the recent authorization of $5 million. The regulations were printed May 20.

Mr. RISENHOOVER. I have been listening to testimony since January 15 and I find the mayors, Governors, don't have enough money to keep their firemen and policemen on the job and won't put money into OSHA unless we do it.

Mr. SHEEHAN. The Federal Government won't put it in either. You have no reason to feel the Appropriations Committees of this Congress will fund any regulatory program or any kind of program. Howard McGuigan, my conferee, said we were providing money to put people back to work and it was turned down, the appropriations were not applied for.

So there is no reason to think the Daniels' bill will be appropriated to the maximum degree by the Appropriations Committee any more than you quite rightly have recognized even the States can't do this thing.

Mr. RISENHOOVER. I think individual Members of Congress will do anything to say we have made this a better act to give you help. I think there is that much feeling on the floor of the Congress. I believe the money will be appropriated if we provide the authorization.

Mr. DANIELS. Mr. Gaydos.

Mr. GAYDOS. I would like to respond to my colleague, the track record as of now does not support your observation. I am talking about whether or not Congress as a body is ready to appropriate sufficient funds. I see not a scintilla of evidence to indicate what you say is true. To the contrary, there is more than just a smidgen of evidence that they will not do it.

Mr. RISENHOOVER. If we have provided the vehicle, then we have done our part.

Mr. GAYDOS. I wish to commend Mr. Sheehan.

Mr. DANIELS. That is the second bell. We have just enough time to get over there and vote. We will be back. I want to afford the witness an opportunity to testify.

[The committee recessed to vote.]

Mr. DANIELS. The subcommittee will come to order.

Mr. Gaydos, do you desire to continue?

Mr. GAYDOS. I want to commend most sincerely Mr. Sheehan. He has been before this committee many, many times. We have always found his statements well worth reading and studying late on after the questions have occurred.

In conjunction with this legislation, I give him assurance I will again be repeating those acts and going into his statement in detail. They are detailed, right on point, and there is not a lot of surplusage in it.

I want to make one comment maybe in conjunction with what you have stated. You did make reference to the fact that the Liberty Mutual Insurance Co. is properly considered as a test run as to whether or not consultative services would or would not be utilized if they are made available to everybody in all States. I want to respond to my good friend, Mr. Risenhoover, that that is a good example as far as I am concerned for two reasons. First, Liberty Mutual Insurance Co. represents roughly 9 percent of the available workmen's compensation insurance requests throughout the country, so that gives it opportunity as a big company in a lot of different areas.

Second, I think that their motive is very important, meaning they do make these consulting services available for their own self-serving interest because they will save money, they will be able to offer their services as far as insurance is concerned for less premium cost if they can influence better compliance along the lines of safety. This is part and parcel of it.

So it serves their mutual self-interest if they do have the full utilization of these services. So these two factors to me indicate that it is a good area in which to investigate and which to compare if you are looking for a track record to determine just what we could expect to make these services available.

So I agree with you it is a good area to look at because it does give us a definitive track record and, if my colleague has any other area other than that area to look for as far as experience, indicia as to what we can look for, I would appreciate it.

Mr. RISENHOOVER. I would not trust them because they are interested in selling insurance and, second, they can provide consultative services whether we have OSHA or not and, third, they would do anything to have OSHA repealed. They would rather see the status quo maintained, see the opposition to it and see it thrown out.

Mr. GAYDOS. I respond I don't share all your feelings in all three areas. I think you make some valid points but there is no other area we can look at as far as an experience rating and we must accept that area. It is better than nothing.

Mr. RISENHOOVER. You can look at Oklahoma where we have consultative services as to the experience derived and we are getting better compliance with less friction.

Mr. GAYDOS. As I understand it, you have six people. What are they doing that is so great that it would be in your opinion a good area to use as an indication to how it works?

Mr. RISENHOOVER. I have six people in my district. The inspector is going as fast as he can from one area to another as long as businesses are open, going in and telling them what is wrong, telling them, if you don't get this corrected there will be an inspector to slap a fine on you.

Mr. GAYDOS. I have suspicions as to those that support the provision of providing consultative services. I suspect their motive as being one that is not in accordance with what I feel is the purpose of the act. That is my feeling. I would like to see more advocating this on-site inspection business. There have always been those, if you trace the lineage down properly, you will find those that have always been antagonistic to the whole program.

I want to make this point, if Oklahoma has six inspectors, I don't think that would qualify in the degree that I would consider or respond to Liberty Mutual Insurance Co.'s track record which involves something like 600 people and, particularly, since they have a vested monetary interest in providing these services. The premium will be involved as well as the expense to the company.

Mr. SHEEHAN. Could I bring up one point here? I think Mr. Risenhoover's comments about the budget points are well taken.

One of the points he was making was the budgetary problems we are having, and I think we all have to recognize that. That may be a reason for not overlegislating in areas from whence we don't have too much proper information. I want to emphasize this point with regard to his comment. Under the 18(b) plan States, these are the ones with their own jurisdiction, there are 125 consultants out there now. Under the 7(c)(1) States that have just come in that 1-month period, there are 208 consultants. That is approximately 353 consultants operating at the State level.

I know of no study that has been done by OSHA with regard to the existing 145 consultants, thanks to whether factually the consultant activity did mitigate on the severity of the accidents, or on the frequency of accidents. If you get into the hazardous industry, to what degree is the track record there better, let's say, than the track record of States operating under the Federal Government, which would be the comparison. I know of none so far. That does not mean it may not be a good one. But we have here, with the introduction of the 7(c)(1) program, many more inspectors or consultants going out there and, although I have indicated before that it seems to me all the States could get in here and this number will go up, it would behoove this committee at this point to say let's take a look at this.

One thing I probably would also recognize is that one of the measurements you might want to make is not only the impact on the safety in the workplace, which we are really talking about, at least the labor movement is talking about, but you might be concerned about the impact in the political arena and has this mitigated political opposition to us. That is a different dimension, I think, but I would like to see the studies that should be demanded by this committee. I think Mr. Gaydos has been talking about where is the experience. We have talked about some experiences here, the IUD study talks about experience. There is a lot out there. What is its impact on safety in the workplace? Why don't we find out before we rush into anything?

Mr. GAYDOS. Let me ask two short, concise questions. No. 1, are you advocating that it would be wise for the committee to exercise limited oversight to find out what these States think and what their experience is with what they are doing?

Mr. SHEEHAN. I certainly would.

Mr. GAYDOS. My second question is, Mr. Sheehan, given the legislation before us, following a discussion with other witnesses we have had and also your own, if some changes were made possible, would you be in a position to support the legislation?

Do you see any area where we could effect some compromise where the results would be that you would be supporting this legislation on all fours?

Mr. **Sheehan.** No.

Mr. **Gaydos.** I have no further questions. I yield to Mr. Risenhoover.

Mr. **Risenhoover.** The appropriation we are operating under, it is my understanding the matching money available to these States is the result of the $5 million. We have no——

Mr. **Daniels.** That is correct.

Mr. **Risenhoover.** We have no authorizing legislation for that and there is no reason to believe it won't be continued beyond the 94th Congress.

Mr. **Sheehan.** That is not true, really. The authorizing legislation it is operating under is under OSHA.

Mr. **Risenhoover.** But it is taken from other OSHA programs. The $5 million has been taken from other areas.

Mr. **Sheehan.** We are not going to say—you see, H.R. 8618, what does that do?

Mr. **Risenhoover.** We authorized the appropriation for it.

Mr. **Sheehan.** It sets up what is known as the section 721 program. When OSHA comes in, it is authorized up to $7 million. Now, there is nothing in this Congress that is going to prevent the experience that Mr. Gaydos quite rightly pulled out of history, that if OSHA came in, let's say, with $80 million—I forget what the budgets are now—$80 million for all other aspects of the act and then came in, let's say, with full funding for Mr. Daniels' bill at $2 million or eventually $7 million, either the Appropriations Committee could say we think consultative service is doing a better job than enforcement activity, we ought to give it a shot, give it a better chance, let's cut down on the $80 million they are asking for and give them $78 million and give them $2 million. So we give them a total of $80 million. We have already had that happen.

Mr. **Risenhoover.** You are always faced with that.

Mr. **Sheehan.** Right. There is nothing in this act, because this act amends OSHA by opening up a section 721 program. We already have a section 7(c)(1) program. What you are ending up with is a section 23(g) program, a section 721 program and a section 7(c)(1) program.

Mr. **Risenhoover.** I think the Appropriations would look at the program and divide the money. I don't think they will take away from enforcement.

Mr. **Sheehan.** We have had such experience. Mr. Gaydos pulled that out of the history.

Mr. **Risenhoover.** I won't take away from enforcement. I am trying to add on for consultative services.

Mr. **Sheehan.** Yes; but in the Appropriations Committee it is a little different.

Mr. **Risenhoover.** Where you are talking about the political end, it does not make any difference what you want to see accomplished, if you are not here, you are not going to see it done.

Mr. **Sheehan.** We can't contest your evaluation.

Mr. **Daniels.** Can the Chair get a word in edgewise? I would like to ask a couple of questions. I fear we are going to get called for another vote. I would like to ask a couple of pertinent questions. As long as time permits you can ask all the questions you desire.

You have indicated in your direct testimony that you felt that Congress ought to adopt a joint resolution on 7(c)(1) programs with *either 100-percent* funding or 90–10 funding. Now, if a 100 percent 7(c)(1) program or 90–10 program was established, we have no way of knowing whether all preempted States would wish to participate in the program. OSHA at the present time extends to 56 jurisdictions. We have 22 jurisdictions under 18(b) plans, that leaves 34 and of the 34 we have 15 under 7(c)(1) with 50–50 funding. Both programs are funded 50–50. That leaves 19 jurisdictions. We have no way of knowing if those 19 jurisdictions will desire to come in on on-site consultation.

Now, if a State does not desire to participate, employers in that jurisdiction would still be without on-site consultation. Would you agree with my statement?

Mr. **Sheehan**. They would be without on-site consultation in the preempted States?

Mr. **Daniels**. Right.

Mr. **Sheehan**. That is not completely correct. Mr. Clayman indicated there is a NIOSH program in place and the NIOSH under section 21(f) of the act provides hazardous——

Mr. **Daniels**. I am going into that situation in a moment.

Mr. **Sheehan**. They have that.

Mr. **Daniels**. I would like a direct response to the question I presented. Of those remaining 19 States that were not preempted——

Mr. **Sheehan**. There are no consultative services in the sense we are talking about.

Mr. **Daniels**. Then they would be without consultative services?

Mr. **Sheehan**. I can't make the statement that they would be without it. They are now without it but we have no way of knowing that they would remain without it.

Mr. **Daniels**. Even if we funded it on a 90–10 or a 100-percent basis, there is no way of knowing?

Mr. **Sheehan**. Since we are all speculating, I would hazard the speculation that the 19 would run in here.

Mr. **Daniels**. You are speculating they would.

Are you sure one or more of the remaining 19—who have not indicated they have no intention to participate—if they didn't participate, then no on-site consultation service would be available to employers in that State?

Mr. **Sheehan**. Any more than they would not be available under H.R. 8618. H.R. 8618 does not make mandatory on-site consultative services.

Mr. **Daniels**. I have another question. In section 5, we impose a general duty on covered employers to furnish employees employment and a place of employment free from recognized hazards. We also impose a duty on employers to comply with standards. Don't we therefore have an obligation under OSHA to those same employers to provide consultative services, and don't we have that obligation to employers in every jurisdiction covered by OSHA?

Mr. **Sheehan**. I think the question is, does the Federal Government have a responsibility to provide information to employers in all jurisdictions?

Mr. **Daniels**. Correct.

Mr. SHEEHAN. I think the issue, however, Mr. Chairman, is a very narrow one, not the broad one that question would indicate. Yes; the Federal Government has the responsibility to provide information to employers. Does the Federal Government provide this? I think we have been trying to indicate before the committee that off-site consultative service is provided in droves. Even the testimony of OSHA, as they testified before you, was that there was a better cost effectiveness in that type of program. So the advice is being extended to employers.

Mr. DANIELS. Where; on-site?

Mr. SHEEHAN. No, off.

Mr. DANIELS. At the DOL or their regional office?

Mr. SHEEHAN. In the programs in which the Federal Government has preempted the State, these are all off-site consultative service programs. I wanted to just move a little more into that answer on this thing. The question really is, does the Federal Government have the responsibility to send out on-site consultative consultants? There is nothing in the act that says that it does. I think there are a lot of employers that think they will end up getting free scientific and engineering and health service for their plant. They won't get it. The money provided here will not give us that caliber consultant. He will be a guy that will go out with a book and look around and say, "I think you are in violation."

If you look at some of the employer problems, many don't know how to correct their situation, and the OSHA consultant won't be a walking encyclopedia as to how you debate some of these sanctions. They will have to employ the private consultants to help them come to compliance, I submit, with known standards. They know what the standards are; it isn't that they don't know what they are. They may not know how to comply with them. The point I am making is that the Federal Government is providing a great deal of information to these employers.

Mr. DANIELS. This committee in its oversight has received many complaints that the OSHA, while it has the authority to provide consultative services—have been advised that such consultative advice will be given if they go to the Department of Labor or to their regional office.

Now, it is hard for me to fathom and to understand how a representative, a consultant in the DOL or regional office, can visualize that particular employer's workplace and tell him what he should or should not do to correct violations. How does he know what the violations are without visiting the worksite?

Mr. SHEEHAN. I think the issue is not to find out whether there is a violation but whether the employer is using proper operating and work practices, and is he familiar with what the standards are. The OSHA inspector, or consultant even, it isn't his job merely to find out whether there is a violation. It is the employer's responsibility to find out what the standards are. If there is some problem—and I submit the evidence so far doesn't indicate there is a great one here—that the employers don't know what the standards are, then they can find out what those standards are off-site. The question isn't so much whether I am in violation of the standards that I know about. I submit that I may be in violation because I don't know what the standards are. You don't need on-site consultative services to tell an employer there is a standards on this or on that. I am sure that is what is at stake.

In answer to your question, if you wish, class type contact can be made with the employer so he knows what the standards are. His problem is that he does not know what the standards are, not that he does not know he is in violation.

Mr. DANIELS. Assume he knows the standard, it would not necessarily follow that he is aware of the fact that he is in violation.

Mr. SHEEHAN. I think it would follow more than it does not follow.

Mr. DANIELS. You stated earlier in your testimony that if this legislation was passed, there is no assurance that the authorization provided for under this bill would be approved by the Appropriations Committee or that the Appropriations Committee would make the proper appropriation as requested.

Isn't it likewise true with reference to the action of the Appropriations Committee that was taken last month under the supplemental appropriation when it approved $5 million for the 7(c)(1) program?

Mr. SHEEHAN. Yes. That is the point we are making.

Mr. DANIELS. We have no guarantee—therefore, we have no guarantee beyond fiscal year 1976 that there is going to be an appropriation for $5 million or less for this particular program?

Mr. SHEEHAN. Any more than whether you pass this bill or whether you don't.

Mr. DANIELS. Therefore, why is it necessary to have legislation, authorizing legislation——

Mr. SHEEHAN. I think the point has been made that you need the legislation to guarantee the appropriation. Our point is that you don't need the legislation to guarantee the appropriation because with the legislation you have no more guarantee than without it since OSHA itself, the act that has passed, does give you the authorization to fund these programs.

Mr. DANIELS. Mr. Sheehan, isn't it really true that the reason you and the other witnesses who appear here this morning testified in opposition to H.R. 8618 is that you feel that there will be a dilution of funds for enforcement and that is the basis for your complaint?

Mr. SHEEHAN. That is one of them. There are three of them, if I may say.

Mr. DANIELS. Let me hear the other two reasons.

Mr. SHEEHAN. The experience we have had on the floor with the Michel amendment, that is history. We have suffered inroads.

No. 2, and even more seriously, is the fact that we view placing the consultative service inside an enforcement agency will gradually begin to erode the first instance citation enforcement action of this agency. Your bill is absolutely clear on this area. There is absolutely no doubt about that, Mr. Chairman, and we do not contend that fact. We are talking about the legislative process that goes on in this Congress and we know full well that the real guns are leveled at the first instance citations.

The Chamber of Commerce has come before you already and said this. And I think there may be some legitimacy to the argument. If you accept the assumptions of the Chamber of Commerce that if consultative services are provided this amounts to safety in the work place—which we contest, by the way. We don't agree with that. We have lived under that for years and we don't buy that. But the basis of this bill is that it does. I think it is most logical then, Mr. Chairman, that members of this committee and the future committee would have to start looking at the fact as to whether an employer who honestly requests consultative services is going to get such services because of the sparsity of the staff and money available under this bill; $78 million total and $10 million at the most for consultation; and how is it going to serve 160 million people of the United States? That is a very small amount of money. Will not that employer have some justification to say that pending the visit of the consultant, you should not come in here with your inspection force? Would not the people down in Oklahoma say——

Mr. RISENHOOVER. No.

Mr. SHEEHAN. I have heard them say that. That is the second reason. I have forgotten the third one.

Mr. RISENHOOVER. This law does not dilute that at all. This law does not dilute that first instance citation, it does not dilute it one bit.

Mr. SHEEHAN. As we indicated, the Chairman's bill—and I think he was very much concerned by the way, because we did have discussions with the Chairman, he has been very open with us, he knows that. We know he does not mind the dialog that is going on right now. He has been very open with us in the discussion of this bill and he was most insistent that that protection be in the bill that he presented. As a matter of fact, he developed it before the representatives I mentioned were here. What we are indicating is that it sets up that process, that that process will not stop merely because you put this in the bill. The experience Mr. Gaydos mentioned his already taken place on the floor.

Mr. RISENHOOVER. Maybe you don't see this as I do, but I see this as a way of unloading those guns pointed at this act.

Mr. SHEEHAN. As I indicated to you before, the political opposition in the House has not been as intensive as it has been before without the consulting.

The other thing, that is the third reason, we have the program in place. What more do you want? Why do you have to have duplicative legislative processes taking place? We have the program.

Mr. RISENHOOVER. I think the bill spells it out more clearly so there is no question in anyone's mind.

Mr. SHEEHAN. There is no doubt in the mind of Oklahoma, you have a program.

Mr. RISENHOOVER. Well, that it continue.

Mr. SHEEHAN. I must say if there is any business organization that wants to testify together with the AFL-CIO-IUD, I might throw in the steelworkers, we will testify before any appropriations committee in a joint appearance with them to continue funds going to the States in this program. Let them come forth and we will join with them.

Mr. DANIELS. One further question and I will then yield.

Mr. Clayman, the previous witness, put great emphasis on NIOSH as the agency today according to his interpretation of OSHA that was passed in 1970, has the jurisdiction to do so under section 20 and section 21, which is captioned, "Training and Employee Education." I have read section 21 over quite carefully since he testified and my interpretation is that NIOSH may have that authority, but that authority is also specified in the Secretary of Labor. If you read subparagraph 3 of that section it says, "The Secretary in consultation with the Secretary of HEW shall"—then it goes on to say, two; "consult with and advise employers and employees."

In other words, the authority is with the Secretary of Labor.

The trouble is, Mr. Sheehan, the trouble here is that the Secretary of Labor up to this date has not seen fit to provide this service. Since he has not seen fit to do so up to this day, I think we have to implement this act and spell it out loud and clear that he will.

I can tell you that this committee is going to carry on further on-site consultations. The Secretary of Labor, Mr. Dunlop, has sent in a request to this committee that he desires to appear and testify in these oversight hearings. He perhaps will further enlighten us on this subject.

Mr. SHEEHAN. Could I comment on that? I think you bring up a very valid point. The section there says the Secretary in consultation with HEW shall consult with and advise employers and employees.

That gets back to an original question you asked, as to whether the Federal Government has the responsibility to advise employers and consult with employers and I indicated to you that: yes; they did.

The narrow question is whether the Secretary shall advise and consult with the employer on the site and this section of the bill, section 21(c) of sub two, has to be read with section 8 of the act which has to do with the enforcement activities of the Secretary when he walks into a worksite.

It has been the interpretation of the Secretary of Labor, and one in which the labor movement concurs, that once he walks into the worksite, he has a responsibility to take care of the violations that are in there for them, but that he can exercise his responsibilities here by off-site consultative services. By the same token, HEW does not have any enforcement activities, hence they are not bound by any other section of the act which inhibits what they might do either on or off the worksite and Mr. Clayman made reference to that in the role of HEW. HEW is well described or identified in their hazard evaluation. I must say we in Labor are very much disturbed by the fact there is a growing awareness of occupational diseases in the workplaces due to hazards that I would say legitimately a lot of employers know nothing about.

Certainly labor movements are growing in their perception of this field. Yet when you take a look at the requests to NIOSH under this section for on-site hazard evaluation without any fear of citations, the requests have been minimal. Another indication of how much demand there is, I just mention that.

Mr. DANIELS. Your answer to the last question indicates to me that it is necessary, therefore, to amend the act to set up separate Federal consultation personnel and inspectors.

Mr. SHEEHAN. The fact that the Secretary of Labor is included in one very small area to advise and consent with the employers, a very small one, namely, on-site consultation. In that small area, the gap is provided for under section 7(c)(1) of this act.

Incidentally, the Federal Government—that is something that was in my mind before—is financing, the Federal Government is exercising its responsibility and obligation in this area by providing the money to these States to fill that very small, narrow gap.

Mr. GAYDOS. On that, Mr. Chairman——

Mr. DANIELS. Mr. Gaydos.

Mr. GAYDOS. On that point you would be in a position, would you not, to unqualifiedly support legislation of this committee if it provided an increase of that 50 percent for the States to 80 or a hundred percent to increase that fund for inspection?

Mr. SHEEHAN. If you changed the legislation to some kind of sense of Congress, some kind of joint resolution, we would.

Mr. GAYDOS. You are not taking a position you would not support some amendatory language with those conditions?

Mr. SHEEHAN. I think the amendment route is not one that we support. I think what you are saying is important. We do support every effort to get the States that are preempted into this activity and get OSHA to provide funds through 7(c)(1) and we will do what we can to go before the Appropriations Committee and would support anything short of an amendment to OSHA because it is not needed to get Congress demonstrating to OSHA they want to fund it this way. I think Secretary Dunlop would respond.

Mr. GAYDOS. I asked many of the witnesses, both business and labor, particularly business and national and local chambers of commerce the question, "Do you know of your own knowledge of any business that is out of business because of any OSHA enforcement?" All of them responded to me that they didn't know of any, it was all rumor. That brings me to this observation, and I wonder how you felt about it. To me when an inspection is made by an inspector and an employer is cited, everybody in that business, in that locality, county, municipality, township, or what-have-you, knows about that violation and the fine, if there was any. That in itself acts as a deterrent and unquestionably.

However, twisting it around, diverting funds from inspection and putting them into on-site consultation, when a consultant is called on the premises and he consults, nobody knows about it because that is purely between him and the business, therefore, I think it is logical as a practical matter to conclude that money and services in that area does not begin to have the deterrent efficacy as the inspection.

Mr. SHEEHAN. That is a very excellent point to bring up. Earlier today when Mr. Beard was asking will this bill have an adverse impact upon workers, what came to my mind at that time was the fact that workers who had experience under the State programs where inspectors would show up unbeknownst to workers in that plant, cast a great deal of credibility or lack of credibility on the State operations.

They put in the walkaround provision so the workers inside the plant as well as the employer outside knew when the OSHA inspector came in because he had an obligation to meet and walk around with them. You institute a consultative service program where we get back to the old days of secret meetings, privileged meetings with employers, then I am afraid you will begin to institute again the credibility gap between workers and those supposed to be regulating in their behalf.

Mr. GAYDOS. I have most sincere reservations about the ultimate purpose of this legislation. The reason for it is that more and more I think there is an imminent danger, an obviously imminent danger that we are creating a misconception that people, business, what-have-you, directly or indirectly are associating on-site inspection with the protective cloak that we are talking about. Once you have availed yourself of that service, everything is hunkydory.

Mr. DANIELS. Mr. Gaydos, we have a vote on the floor, the second bell has rung.

The Chair is going to conclude this hearing and I want to express my thanks to Mr. Sheehan on behalf of the committee and personally to you and all the other witnesses that appeared here this morning. I think we had a worthwhile and informative hearing this morning.

[Whereupon, at 1:15 p.m., the committee adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF JOSEPH MCEWEN, PRESIDENT, NATIONAL ASSOCIATION OF WHOLESALER DISTRIBUTORS, WASHINGTON, D.C.

My name is Joseph McEwen. I make these remarks in my capacity as President of the National Association of Wholesaler-Distributors (NAW). You should also know that I am President of Modern Handling Equipment Company of Philadelphia, Pennsylvania, a firm which distributes material handling equipment and supplies. I am also a Past-President of the Material Handling Equipment Distributors Association.

The National Association of Wholesaler-Distributors is a federation of 94 national commodity-line associations which in turn are composed of some 30,000 merchant wholesaler establishments located throughout the 50 states.

According to Small Business Administration statistics, over 90% of the merchant wholesalers in the United States are classified as small business. The industry consists of approximately 440,000 establishments throughout the United States, employing over 3.4 million Americans.

NAW welcomes the opportunity to express our industry's views with respect to on-site consultative services for small employers under the Occupational Safety and Health Act of 1970. We believe the concept embodiesd in H.R. 8618 is a sound one, and we urge its enactment.

We have long supported the objectives underlying the Occupational Safety and Health Act. The Act was passed with the explicit purpose of assuring "so far as possible every working man and woman in the Nation safe and healthful working conditions * * *." Ours is a relatively labor-intensive industry, making our employees one of the major assets. Thus, from a pragmatic as well as a humanistic viewpoint, we place a high value on providing our employees with safe and healthful working conditions. We have long been of the opinion, however, that the Act and its administration have placed undue hardships on small business.

Virtually everyone who has voiced an interest in the Occupational Safety and Health Act since its enactment, has recognized that small business is at a distinct disadvantage when attempting to understand what is expected of them in order to comply with its provisions.

On March 11, 1974, Senator Clark, when introducing S. 3147 a bill to amend the Occupational Safety and Health Act, stated: "* * * four years ago, Congress enacted the Williams-Steiger Occupational Safety and Health Act. Since then, it has sparked considerable controversy, particularly in determining the law's application to small businessmen. Perhaps the greatest problem has been the dilemma of many small businessmen who want to comply with the act, but who find it difficult to pierce the voluminous regulations and complex provisions to determine exactly what is expected of them."

At this time last year, a spokesman for the AFL–CIO stated in testimony before the Senate Labor and Public Welfare Committee, "From the outset, OSHA has failed to do some rudimentary things to provide small employers with the clear, simple and brief guides they should have so that they will quickly be able to understand how to comply with the Act."

For the sake of brevity, I have cited only two examples of statements which recognize the disadvantages of the Act to smaller businesses. If further evidence is needed to prove this point, I refer this Subcommittee to the printed hearings before the Subcommittee on Labor on the subject of OSHA during the 93rd Congress. Therein, a large majority of the witnesses referred to the problems encountered by small business when attempting to comprehend and/or comply with the Occupational Safety and Health Act.

The difficulty of interpreting the volumes and volumes of regulations, standards, and rules have resulted in frustration and confusion on the part of the small businessman. We commend the Chairman for his leadership and commitment to provide consultative services to employers desiring to comply with OSHA standards.

Our primary concern is that the consultative services provided in the legislation being discussed by this Subcommittee be structured in a way that will encourage maximum effectiveness. NAW believes that the enforcement mechanism and the consultation process must be clearly separated, to ensure that an employer requesting advice and counsel receives exactly that, and not punitive fines and citations. We submit that clarification of the terms "substantial probability" and "imminent danger" contained in Section 2(A) and 2(B) is necessary. Broad interpretation of these terms by a consultant could trigger the enforcement procedure and result in sanctions not intended by the Congress.

In addition, we are concerned with the non-binding nature of the consultant's advice in any subsequent OSHA inspection. Advice given in the course of a consultative visit, and taken on good faith by the employer, could still result in monetary penalties to the employer visited by a compliance officer. This does not seem to provide much incentive to the small businessman to comply with the law.

NAW believes that an effective on-site, non-punitive consultation program would contribute much assistance to the small businessman attempting to understand the law and bring his operation into compliance. We will actively urge its enactment, and commend the Committee for its recognition of the problems small business encounters under the law.

AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION,
Chicago, Ill., August 6, 1975.

Hon. DOMINICK V. DANIELS,
Chairman, Subcommittee on Manpower, Compensation, and Health and Safety of Committee on Education and Labor, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The following remarks are made in my capacity as President of the Automotive Service Industry Association. You should also know that I am Vice President of Fochtman Motor Company, Inc., wholesaler-distributors of automotive parts and equipment with our main store and ten branches operating in northern Michigan.

The Automotive Service Industry Association is the automotive world's largest and most comprehensive organization, with its membership encompassing more than 7,000 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, automotive electric service distributors, manufacturers and remanufacturers of replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies, and accessories.

ASIA enjoys affiliation with the Automotive Booster Clubs International, and maintains close and constant liaison with the Automotive Service Council; National Congress of Petroleum Retailers; Equipment & Tool Institute; Automotive Wholesaler Association Executives; Production Engine Remanufacturers Association and the Automotive Industries Association of Canada, giving ASIA representation at every point of the automotive service market from the manufacturer to the ultimate consumer.

ASIA wishes to express its support for the concept of H.R. 8618 and urge with minor modification the bill's adoption. We for years have supported moves in Congress to allow consultative investigations to occur in our small businesses without the fear of punitive action.

Our members are all basically small businessmen who cannot afford the services of the expensive consultants necessary to be sure that we have complied with all the often confusing and contradictory OSHA regulations. As we are a labor-intensive industry, we wholeheartedly support occupational safety and health for the benefit of our employees. We believe that the employee safety will be greatly enhanced by giving employers the opportunity to avail themselves of a consultative investigation by OSHA to help them bring their places of business into strict compliance with the law.

In the past, our members have, as have all small businessmen, been afraid to discuss *any* safety problems with OSHA because of the inherent fears of the mandatory investigation and citation provisions contained in the original law. The size of our member firms places them at the virtual mercy of the Occupational

Safety and Health Administration because we lack the sophisticated manpower to interpret the Agency's regulations and have nowhere to turn for effective help.

We need clear, simple, understandable guides developed for industries such as ours along with the availability of consultative investigations to increase our industry's compliance with the law. Please understand there is absolutely no reluctance on the part of our membership to comply with the law, but utmost frustration in attempting to understand the many complicated and technical provisions of OSHA regulations.

We would urge your Committee to structure H.R. 8618 in a way which will protect and assure small businessmen that the enforcement mechanism and consultation mechanism of the Agency will be distinct and separate. There should be no question regarding the separability of these two functions. If there is any question, not only our members but other small businessmen, will remain reluctant to discuss safety matters with the Agency for fear of inadvertently being the subject of a citation and fine.

We also believe that if given a clean report by the OSHA consultant, no subsequent investigation should result in a citation and fine. This protection should be contained in any consultative investigation legislation. Our members should be able to rely on the advice given and the actions taken in good faith as a result of the consultative visit to insure their compliance with the law and alleviate any possibility of later citation and fine resulting from a differing interpretation by an OSHA compliance officer.

We appreciate the opportunity to express our comments on H.R. 8618 and would appreciate this letter being made a part of the hearing record.

Sincerely,

VINCENT A. FOCHTMAN.

CAN MANUFACTURERS INSTITUTE,
Washington, D.C., August 7, 1975.

Hon. DOMINICK V. DANIELS,
Chairman, Subcommittee on Manpower, Compensation, and Health and Safety, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Can Manufacturers Institute has been privileged to appear before your Subcommittee in the past, and, although we were not scheduled to appear during your hearings in late July, 1975, we wish to thank you for this opportunity to reenforce our support of the OSHA On-Site Consultation Legislation (H.R. 8618) for the record.

Since our last statement before the Subcommittee in September, 1974, the Can Manufacturers Institute has grown from 39 producers of metal cans to 50. Even though this testimony is presented in support of the interests of our small business members, we are encouraged by the general support of the entire industry for this type of legislation.

We believe that business, particularly small business, is very responsive to the needs of its employees. We want to emphasize that the volume and the complexity of the regulations promulgated by OSHA designed to assist in providing such protection result in an inordinate burden upon small manufacturers who simply cannot employ the expert staff to ensure full compliance at all times. Hence, we wholeheartedly support the basic intent of H.R. 8618 which you introduced on July 14, 1975.

We detect in the bill, and in the recently promulgated OSHA regulation 29 CFR 1908 dated May 20, 1975, a basic distrust of the willingness of employers to live up to the requirements. The legislators and regulators apparently simply are not willing to believe that sound, constructive advice to industry will provide more employee protection (because of wholehearted voluntary acceptance and use of the program by industry) than the threat of regulatory compliance action, which may result in little use of the provision by industry for fear that regulators will be camped on their doorstep.

By including section (d)(2)(B) in your bill, we believe you would significantly reduce enthusiastic participation in the program. We urge you to delete that section (lines 16–25 on page 2 of H.R. 8618), because we are convinced that enthusiastic utilization of the provisions of the bill without it will provide greater employee safety than would be the case by retaining the implied threat of unknown magnitude.

It might be noted that Sec. 2 of the bill, the appropriation authorization, does not speak directly to the method of funding implementation. The Subcommittee may want to clarify this section to the end that support for carrying out the first section is to be provided by the Federal Government, but the operation normally will be by the States.

Sincerely,

M. W. JENSEN,
President.

STATEMENT OF NATIONAL SMALL BUSINESS ASSOCIATION

Mr. Chairman and Members of the Subcommittee: We first wish to congratulate Chairman Daniels and other Members of the Subcommittee for their quick and decisive introduction of H.R. 8618, an amendment to the OSHA On-Site Consultation and Education bill in order to clarify and rectify the Labor Department's interpretation of the on-site consultation amendment.

This statement is presented on behalf of the members of the National Small Business Association. The Association represents firms doing business in more than 500 industry categories.

In the past few months the National Small Business Association has met with Department of Labor administrators relating to the interpretation of the on-site consultation amendments to the Occupational Safety and Health Act. We were impressed by the degree of co-operation and time given us by the OSHA staff. However, once the regulations were announced, NSB could no longer support the Department of Labor rules, especially those that would circumvent the intent of Congress which was to encourage voluntary request for inspection by the business community. Instead, we found that inspectors could notify enforcement authorities if a violation were found.

Our main problem with H.R. 8618 is in how a "reasonable opportunity to eliminate the hazard" is to be defined.

Our concern is with the small employer who, in all good faith, desires to comply with the recommendations given in writing by the inspector, The employer wants to correct problems resulting from the voluntary inspection but runs into problems over which he has no control. To be specific: If the employer needs any protective device or equipment and finds parts are back-ordered for six months, can he be subject to a citation? If the employer orders the equipment, is he in good faith compliance with the written analysis given by the state inspector? We feel some degree of protection must be given the employer who can show he has attempted to comply with Federal and State regulations.

In a time of short money supply, a small employer may not be able to directly finance equipment necessary to come into compliance. Does the written evaluation by the state inspector, resulting from the voluntary on-site consultation, qualify the employer for the SBA loan program?

We feel a voluntary compliance program will only work if the samll business community is given a fair chance to eliminate potential hazards, and not be afraid of being cited for violations and subjected to fines. A businessman cannot know all the regulations in a highly-technical field. With a little patience the Congress will learn that a positive and constructive approach, as embodied in H.R. 8618, will work for the benefit of both employees and employers.

STATEMENT OF GILLESPIE V. MONTGOMERY

Since its inception in 1970, the Occupational Safety and Health Act has generated a considerable amount of controversy. Reaction from constituents and other interested citizens evidences the fact that OSHA is considered by many to be extremely harsh and punitive, rather than productive.

The attitudes of employers, as revealed in their letters and comments, point out that they are concerned with the health and safety of their employees. In fact, the general idea on which the Occupational Safety and Health Act is based is a concept which we must espouse—that increased efforts toward safe and healthy surroundings will result in a higher quality of working conditions. The objective is sound.

However, in the case of OSHA, as in other federal bodies, the stringent rules and regulations adopted have only served to weaken its purpose by burdening the businessman and mystifying him. Little thought seems to have been given to the effect of the law of the small business, the backbone of our nation.

We must address ourselves to the somewhat dubious proposition that punishment is the key to compliance. In this case, the emphasis is misplaced. Enforcement in the form of penalties has been the basis for achieving the goals set out in the original legislation; compliance is the key, but voluntary acceptance should be the desired result. I very strongly doubt the validity of the idea that fear of penalty or fine will actually encourage employers to meet the provisions of the law, and if at all, only to a minimal degree. Strict enforcement and threats will never produce the kind of encouragement which will lead to full and complete acceptance of the law or the stimulus to achieve full compliance with it.

Several suggestions come to mind, and they include proposals some of which have come before the House in the form of legislation. OSHA must work to establish itself as a body eager, or at least willing, to aid businesses in complying with the provisions of the law. Perhaps several businessmen could meet together with a representative of OSHA to determine ways in which the purpose of the law could be achieved and whether their present facilities do comply with the minimum standards. On-site consultations would assist in disseminating information about hazardous practices or unhealthy conditions. In addition, these visits, without fear or fine, would stimulate a co-operative relationship between inspector and employer.

Today small businesses especially are faced with a host of rules and regulations which hamper their growth and make their survival uncertain at a time when we have record high unemployment. We must realize the necessity of keeping these businesses alive and at least recognize the problems which are peculiar to them as we draft future legislation and implement existing law. A more reasonable and just application of the Occupational Safety and Health Act would be a step in the right direction.

STATEMENT BY HON. RICHARD C. WHITE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and distinguished Members of the Subcommittee: It has been four years since the Occupational Safety and Health Act was implemented, and through testimony you have been receiving during your oversight hearings of the previous session and this Congress, at least one point has been emphasized. While the facts may show the very real need for a uniform code of employment safety practices, experience with the program indicates an equally compelling need to make adjustments in the present law.

Perhaps the most talked-about amendment advocated is one which would statutorily provide for on-site, nonenforcement consultations to employers, particularly small businessmen. Consultative services has been an issue in almost every Labor-HEW Appropriations bill we have considered since OSHA's enactment. There seems to be universal agreement as to the need and desirability of on-site consultative visits, yet we have continued to only provide these services through individual fiscal year appropriations. Obviously, an amendment to the law itself is long overdue. During the debate on the FY 76 Labor-HEW Appropriations bill, a differentiation was made concerning consultative officers and enforcement officers. It is my sincere belief that, unless eminent danger exists, first instance sanctions should not be issued whether the visit is conducted by a consultative or an enforcement officer. A warning should precede any sanction, as is the case in many administrative penalty procedures.

During the previous session, I testified before this subcommittee on several aspects of the law and the administration of the OSHA law. It is good to note that the Labor Department has begun providing advisory centers in the field offices, publishing "plain language" bulletins, and will be increasing an educational program to sectors of the small business communities. If OSHA is to work in the way in which Congress intended, we must direct its implementation toward effective assistance to the employer in obtaining compliance.

Hopefully, expedient action can be taken on the bill I have cosponsored with the distinguished Chairman of this subcommittee. The bill would provide a program of consultation and education by the Labor Department for employers and employees, and I feel it will go a long way toward lessening the problem still to be experienced. I urge your favorable action on this legislation to statutorily provide for such a program of education and assistance.

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS,
Washington, D.C., September 18, 1975.

Hon. DOMINICK DANIELS,
Chairman, U.S. House of Representatives, Subcommittee on Manpower, Compensation, and Health and Safety, Rayburn House Office Building, Washington, D.C.

DEAR CHAIRMAN: As chairman of the Occupational Safety and Health Consumer Product Safety Committee of the National Society of Professional Engineers, I appreciate the opportunity to expand upon NSPE's formal testimony of July 22, 1975 on advisory consultative services to be provided under the Occupational Safety and Health Act. As you requested in our informal discussion following the testimony, I am writing to offer further views on the consultant's role.

To be truly effective the consultant as envisioned in H.R. 8618 must serve as an adviser and counselor, not as an advocate or enforcer. His role is in large part an educational one and much of the success of the consultative program depends on the employer accepting the consultant in this light rather than as an adversary.

For that reason, the National Society of Professional Engineers recommends that H.R. 8618 be amended to specify that the consultant's task include apprising the employer and his employees of the hazards existing on the jobsite and of the best engineering, administrative, work practices and other methods of controlling those hazards. At the same time, when there is imminent danger of serious injury or death, immediate steps must be taken to eliminate the hazardous situation. The employer should have the opportunity to correct the hazard identified by the consultant without fear of punitive action. However, if an employer is unwilling to take the necessary steps to eliminate the imminent danger, the Secretary should be notified and the regular enforcement procedure should begin.

NSPE believes paragraph (d) 2 of H.R. 8618 should be revised to read as follows:

"(2) No consultative visit authorized by this subsection shall be regarded as an inspection or investigation under Section 8 of the Act and no citations shall be issued nor shall any civil penalty be imposed by the Secretary upon such visit; however, if an imminent danger is disclosed during a consultative visit and the employer fails to take immediate action to eliminate the danger, the visit shall be terminated and the Secretary advised by the consultant. All consultative visits shall end with a close-out conference with the employer and his employees' representative to discuss the conditions of the workplace and how to correct the hazards."

This procedure is not without successful precedent. In the Pennsylvania Department of Transportation, for example, an Operations Review Group—a team of highly qualified engineers—visits various Districts and Bureaus, reviewing operations to determine whether the Department is following its own written policies and procedures. Following such a review, the Group will hold a close-out conference with the particular unit engaged in that activity, pointing out any operational deficiencies. Subsequent to the close-out conference, a written report is given to the Secretary of Transportation, who then requests a follow-up report from the affected unit.

Again, NSPE appreciates the opportunity to discuss this issue. If we can be of further service, please do not hesitate to contact us.

Very truly yours,

BENJAMIN D. ROCUSKIE, *Chairman,*
Occupational Safety and Health Consumer Product Safety Committee.

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